



A
LETTER

FROM

SIMON M^cGILLIVRAY, ESQ.

TO THE

CREDITORS

OF

**THE FIRMS OF M^cTAVISH, M^cGILLIVRAYS AND CO.
AND M^cGILLIVRAYS, THAIN AND CO.**

OF MONTREAL, IN THE PROVINCE OF LOWER CANADA;

DATED LONDON, 26TH FEBRUARY, 1827.

WITH AN

APPENDIX,

CONTAINING

**STATEMENTS IN EXPLANATION OF THE CIRCUMSTANCES UNDER WHICH THE
INSOLVENCY OF THESE FIRMS WAS DECLARED AT MONTREAL,
ON THE 27TH OF DECEMBER, 1825.**

LONDON:

PRINTED BY B. M^cMILLAN, BOW-STREET, COVENT-GARDEN,

PRINTER IN ORDINARY TO HIS MAJESTY.

1827.



London, 26th February, 1827.

SIR,

I AM induced once more to trespass upon the attention of the Creditors of the Firms of M'Tavish, M'Gillivrays and Co., and M'Gillivrays, Thain and Co., of Montreal, in consequence of Letters which I have received by the last arrivals from New York; and in reply to which, it is fit that I should offer, both to those Creditors *who have* become parties to my Deed of Assignment, and to those *who have not*, this final explanation of the causes and the consequences of those delays which have arisen, and those impediments which have been interposed to the progress of my arrangements; in order that the *former* class of Creditors may understand to whom these delays, so injurious to *their* interests, are imputable, and to the end that the *latter* may at length be satisfied, if plain facts can satisfy them, that inasmuch as *each of them* has, to the extent of his claim, been the cause of injury to his own property, as well as that of others, the only course now left for them to follow, if guided by any regard for their own interest, is to endeavour to prevent the mischief which they have thus done, from extending further, and, if still possible, to prevent a large Estate, in which each of them has some interest, from being involved in irretrievable ruin.

Assuming, therefore, that you are already acquainted with the statements laid before the Creditors in Montreal, above a year ago, and the Deed of Assignment executed by me on the 2d of February, 1826, to which it had been well for themselves, if all the Creditors had assented with that promptitude which I had a right to expect, and which *I did* most confidently expect; assuming also, that you have seen my Circular Letter of the 25th of July last, I shall begin by observing, that it now appears, the statement of my transactions with the Bank of Montreal, contained in that Letter, and the appeal therein made to the Stockholders of the Bank, against the proceedings of a majority of the Directors, have at length produced their effect, and that the proceedings of the Directors have been over-ruled by an overwhelming majority of their constituents.

In that Letter, I only put it as a *supposition*, "whether these Directors could be actuated by any other feeling than a wish to promote the interests of their Stockholders?"—and I suggested "the consideration, whether *this* was not one of

“ those cases in which the Stockholders themselves would be the most competent judges of their own interests ; especially if there should appear any cause to suppose that any feeling of irritation, or animosity, or old grudge, operating on the mind of any individual, against me or my connexions, could have been mixed up in the recent resolutions of a majority of the Directors ?”—and under the extraordinary circumstances of a set of Directors seeking, if they could, to ruin the interests of a large body of Creditors, including, to a certain extent, those of their own constituents. I submitted, “ that it would be well for the Stockholders who had the largest interests at stake, to make some inquiry into the composition of this majority of Directors, and to consider what interests these Directors, individually, might have in the Stock, and upon what grounds or feelings they might have acted in their recent decision, before that decision should finally be carried into effect.”

As an illustration of these suppositions and observations, I am now induced to offer to the consideration of the Stockholders, a short Statement of the subsequent transactions which have taken place, and a brief view of the comparative amount of interests involved in this question.

Shortly after the dispatch of my Circular Letter already referred to, I received, through the Trustees at Montreal, a proposal from the Bank Directors, to withdraw the prosecution instituted against me by their Agents, on condition of receiving an immediate payment of about 12s. 6d. in the pound, on the balance due to the Bank, after the deduction of the Bank Stock belonging to my Firm, which, by the Charter, the Bank was indisputably entitled to retain for part payment of my Bills.

This proposition showed pretty clearly the opinion of the Directors themselves, as to the validity of their claim to a preference over the other Creditors, on any other ground than that of the compulsory process commenced against me by their Agents, and which was equally open to any other Creditor refusing to assent to my arrangements. It also showed, how little these Gentlemen were capable of appreciating the straight forward policy of a man who had at once declared every fact within his knowledge, and voluntarily surrendered every shilling of his means ; who had therefore nothing further, either to explain or to concede, and who consequently had nothing to fear or to lose.

My answer was necessarily a decided rejection of this proposition, because I had not reserved the means of making separate arrangements with, or payments to, any Creditor. I stated at the same time, that if *all* the Creditors had executed my Deed of Release, and should *all concur* in making me a similar offer of an assignment of their claims for a payment of 12s. 6d. in the pound, with a reasonable time for paying the same ; then, had as times and prospects were, I might

still succeed in an effort to obtain the support of friends who might be induced to join with me in incurring the risk and responsibility of accepting the same; but that, in the situation in which the Dissident Creditors, and especially the Bank Directors, had placed me, I was precluded from entertaining the question of any partial arrangements whatsoever.

On receiving this answer, my Trustees again brought the subject under the consideration of the Bank Directors; and the majority now finding the attempt hopeless, to extort a preference over the other Creditors by compulsory proceedings, changed their ground, and all at once became particularly solicitous to promote, as they professed, the interests of the Creditors in general, by requiring a surrender of the security which I had, out of my own separate property, given to the Receiver-General of Upper Canada, and to Mr. Gerrard, for separate debts to the amount of 23,600*l.*; which debts, be it remembered, I am advised by Counsel, could, if no such security had been given, have been recovered in full out of my separate Estate, even under a Commission of Bankruptcy; and by securing which, therefore, I have in fact protected the Estate from Government Extents, and expensive litigation, and have not, in the slightest degree, impaired the rights or interests of any Creditor, or any class of Creditors. These considerations, as well as the circumstances stated, and the consequences suggested, in my Circular Letter, were represented to the Board by the Trustees, but without effect. The majority seemed determined not to be convinced or satisfied, without obtaining some concession; and, as a *sine quâ non*, they demanded that Mr. Gerrard, and the Representatives of Mr. Dunn, should surrender into the general mass of the Estate, the sum of 9000*l.* Hudson's-Bay Stock, which had been transferred to them for the security of the particular Debts already specified.

This was a demand, compliance with which did not in any manner depend upon me, because I had, with consent of the Creditors, parties to my Deed, and as thereby expressly authorized, transferred this stock, and divested myself of all power to resume any controul over it; nor was it to be expected that the Gentlemen legally in possession of the same, should surrender it, on the unauthorized and illegal demand of this majority of Bank Directors. The Trustees accordingly, after wasting some time in fruitless negotiation, at length determined to resort to the measure which I had suggested some months before, and to appeal to the Stockholders against the majority of the Directors.

This majority consisted of only a superiority of *one vote* at the Board; and I shall hereafter shew what interest the individuals composing the same, had in the stock of the Bank, and in that claim against me, or rather against Messrs. Dunn and Gerrard, which they asserted with such extraordinary pertinacity. So eager and so determined, however, were the *leaders* of the majority on that point, that, regardless, as it should seem, of any interest or consideration, except the gra-

tification of their own peculiar feelings, they endeavoured to prevent this appeal, and refused to concur in calling the general meeting of Stockholders, the requisition for which purpose required the signature of seven Directors; but *two* of the Gentlemen who had so far followed these leaders, appear *at this point* to have halted, and individually concurred in the proposed appeal to their constituents, although at the Board they still voted with the majority, of which they had previously formed a part.

Anticipating what would be the decision of the General Meeting, and on the pretext, which I am advised was unfounded and fallacious, that if a Commission of Bankruptcy should issue against me within twelve months of the *date of my* Deed of Assignment, it would be possible to deprive Messrs. Dunn and Gerrard of the 9000*l.* Hudson's-Bay Stock, already mentioned, and to add the same to the mass of the Estate, the leaders of the party then proposed resolutions at the Board, to instruct the Bank Agents in London to proceed against me immediately, by suing out a Commission of Bankruptcy, so as to prevent, or to render nugatory, any reconsideration of their proceedings by the General Meeting. This attempt was first made *after* the publication of the requisition for the General Meeting, and being then unsuccessful, the attempt was repeated *on the 15th of December*; only thirteen days before the meeting of Stockholders; and so nearly was the object accomplished, that the question was lost only by the absence of one Director, and the casting vote of the President, the Board being equally divided.

In proposing to send such instructions, *one* material circumstance appears to have been overlooked; which is, that the validity of any Commission of Bankruptcy which their Agents, or which any other Creditor could sue out against me, would be extremely doubtful. If *I should determine*, as a refuge against any measures of personal annoyance, to seek the protection of the Commissioners of Bankruptcy, a *voluntary* declaration of insolvency would settle the question at once; but if, on the contrary, any of those Creditors should attempt to *drive* me into the Gazette, they must first *prove* an act of Bankruptcy against me; and if I should resist that proceeding (as in the event of the success of this attempt of the majority of the Bank Directors, I most assuredly would have done), then it would remain for the Lord Chancellor to decide, whether my Deed of Assignment, or any other of my transactions, was or was not an act of Bankruptcy.

It is therefore manifest, that even if the attempt had succeeded, it would have left the Bankruptcy still doubtful, unless *I should chuse* hereafter to resort to it as a voluntary proceeding; and that it would only have ensured *the certainty* of a suit in Chancery, whereof the ruinous consequences which must have ensued to the interests of the Creditors, have, in my Letter already referred to, been sufficiently stated; and these consequences appear to have been duly appreciated by the Stockholders, so soon as they had an opportunity of judging for themselves.

I shall now proceed to state a few facts, shewing the amount of interest in the question, which was held by the Bank generally, and in particular by the party whose temporary situation, as Directors, has enabled them to inflict such injury as they have done, upon the interests of other parties, and from whose over-zealous protection, those other parties, not excepting their own constituents, have had so narrow an escape.

The Debt of the Firm of McGillivrays, Thain and Co. to the Bank, consists		
of Bills drawn on London for 18,000 <i>l.</i> sterling, or currency	- -	£20,000 0 0
Damages in Canada, including all charges, 10 per cent.	- -	2000 0 0
Total Debt	- -	£22,000 0 0
In part of which, the Bank is entitled to retain the Stock belonging to the Firm and its Partners, consisting of 163 shares, on which the instalments paid, of 37 <i>l.</i> 10 <i>s.</i> each, amount to		
	- -	6112 10 0
Balance—Actual Debt to the Bank of Montreal	-	£15,887 10 0
Or, in round numbers, say, currency 16,000 <i>l.</i>	-	

The question on which the *last stand* was made by the majority of the Directors, was to deprive Messrs. Dunn and Gerrard of the 9000*l.* Hudson's-Bay Stock, transferred for their security, as already explained; and the *value* of this question to the Estate, will appear from the following calculation, viz.

The Debts of the House, according to Schedule A, attached to my Deed of Assignment, and which, to the best of my knowledge, is accurate, amounted to		£196,000
Balances due by the Firm in London, to Messrs. Burns, Pozer and Dunn, who have, on explanation, become parties to the Deed, about 15,000 <i>l.</i> sterling, suppose currency.	-	18,000
And I must now add the Balance due to the Bank of Montreal, as above	-	16,000
Making the total Debts under the Deed	-	£230,000
And if the Assets be estimated at 12 <i>s.</i> 6 <i>d.</i> in the pound, which, but for the proceedings of the Bank Directors, I should probably have been enabled to offer for them, they would amount to		£143,750
If the 9000 <i>l.</i> Hudson's-Bay Stock, were to be added, estimating the price at 225 per cent., and exchange at 8 per cent. premium, it might increase the Assets by a sum of	-	24,300
Making the whole amount	-	£168,050

But in <i>that</i> event (supposing it possible), the Debts now secured by that Stock	
must be added to the above sum of	£ 230,000
Say, Receiver-General of Upper Canada	£ 12,600
And Samuel Gerrard, Esq.	11,000
	<hr/> 23,600
Making (in that event) the whole Debts	£ 253,600
Upon which amount, a dividend of 12s. 6d. in the pound, would be	£ 158,500
And the amount of Assets as above, increased by the 9000l. Hudson's-Bay	
Stock, would be	<hr/> 168,050
The difference, therefore, would be	£ 9,550
And Ninepence in the pound, on 253,600l. is	<hr/> 9,510

Therefore, still on the supposition of the Estate paying 12s. 6d. in the pound, the ~~loss~~ of the Bank of Montreal would have been 7s. 6d. in the pound on 16,000l. currency, or 6000l.; and the *value* to the Bank, of the *point* on which so much stress has been laid, as to the 9000l. Hudson's-Bay Stock, would be at the utmost 9d. in the pound on the same sum, or 600l.

For the ill-advised, and really impracticable attempt to obtain which trifling advantage, in the face alike of justice, of equity, and of the interests of the Creditors, the Estate has already been deeply injured, even if the mischief should *now* end; and looking at the consequences which *may still ensue*, exclusive of the delay, the expense, the depreciation of property, and the increased difficulty of recovering debts, or adjusting claims, which have *already arisen* from the proceedings of the Directors, and their Agents in London, it really exceeds *my* power of calculation to estimate the extent of the injury, which, in utter disregard of all explanation, and with a perverse pertinacity, unequalled by any thing I have ever heard of in commercial transactions, these Gentlemen have inflicted upon the property of other persons, in which they themselves had so extremely trifling an interest.

The amount of that interest is easily estimated. The Capital Stock of the Bank of Montreal consists of 250,000l. in shares of 50l. each, on which calls to the amount of 37l. 10s. per share have been paid up: so that the actual capital paid up in money, is 187,500l. currency. And the number of shares is *five thousand*, ten of which, or a capital of 375l., or fifteen hundred dollars, constitutes a qualification for a Director. And it appears rather a singular circumstance, that of the *seven* Directors who formed the majority in these proceedings, *five* held only a bare qualification of *ten shares* each, or capital in the whole to the amount of 1875l.

The interest of *each* of these Gentlemen in the debt of my Firm to the Bank, was 32*l.* currency, or 128 dollars.

If the Estate paid 12*s.* 6*d.* in the pound, the *loss of each* of them would have been 12*l.* or 48 dollars.

And the *value to each of them*, of the question about the 9000*l.* Hudson's-Bay Stock, was exactly 1*l.* 4*s.*, or 4 $\frac{80}{100}$ dollars.

So that it is evident those Directors had a very slight *personal interest* in the protection of that property which they have done so much to injure; and in reply to the argument by which I understand throughout these proceedings, the majority of the Directors attempted to justify their conduct, namely, that it was their duty to obtain as much as possible for their constituents, I will now state the decision of those constituents themselves, upon full consideration of the merits of the case; and notwithstanding the influence generally possessed by a body of Directors, over the opinions of the Proprietors, whose confidence it is always to be presumed they possess.

Of the five thousand shares which form the Capital Stock of the Bank, I have understood that a considerable portion is held by Citizens of the United States, who, according to the Charter, are precluded from voting at General Meetings; and I am informed, that of these Alien Stockholders, several of those most deeply interested (I have heard the names of Mr. Carroll of Maryland, and Mr. Brevoort of New York) wrote letters, which were produced at the recent meeting, disapproving of the proceedings of the Directors, while no such letters were produced from any Proprietors in the United States, approving the same.

I mention particularly the circumstance of the Stock so held by American Citizens, being unrepresented, in order to explain the fact, that the meeting was in reality one of the most numerously attended that has ever been held at the Bank, although the number of shares on which the votes were taken was under three thousand, or about three-fifths of the whole capital; and as my Letters of the 25th and 27th of July, had been for some months in the hands of all the Stockholders, they had every opportunity to investigate *the facts*, and to arrive at a deliberate and dispassionate conclusion upon the *merits* of the case; so that their decision may be quoted as entitled to considerable weight, in the estimation of all persons who have any interest in the concerns of this unfortunate Estate.

These Letters were read to the Meeting, together with a Statement of the transaction, submitted on behalf of those Directors by whom the Meeting had been summoned, and from which Statement the following Extracts appear to me deserving of particular attention, viz.

1st, "When Messrs. Thomas Wilson and Co. had taken harsh measures

“ against Mr. M’Gillivray and Mr. Thain, the Solicitors of that House stated, that
 “ ‘ it would be necessary to prove, on behalf of the Bank, not only that particular
 “ ‘ funds belonging to the Drawers of the Bills were directed to be appropriated for
 “ ‘ their payment, but that the parties authorized to administer those funds, had
 “ ‘ assented to such appropriation, in order to obtain success in the suit, and to
 “ ‘ ensure a final liquidation of the claim, either from those funds, or from the parties
 “ ‘ administering the same.’ ”

2nd, “ The means of proving these points are merely presumptive, and of themselves inadequate. With respect to the appropriation by the Drawers, we have
 “ nothing more explicit than what is contained in Mr. M’Gillivray’s Letter of the
 “ 23d of January*, in which he says, ‘ I did not indeed expressly hypothecate or set
 “ ‘ aside any specific fund for the payment of these Bills, nor did I deem any such
 “ ‘ measure necessary, because I had no doubt about all my Bills being duly
 “ ‘ honoured.’ ”

3rd, “ In the Assignment, a specific fund is indeed named, but is charged
 “ merely with the Bills as a contingency; and neither in the Letter nor in the
 “ Assignment, do we find any thing explicit, peremptory, and irrevocable, respecting an appropriation of Stock to meet these Bills.”

4th, “ In the next place, the Drawers of the Bills, and the Administrators of
 “ the funds in England, have *not* intimated their consent to the appropriation,

* Before Messrs. Thomas Wilson and Co. commenced their proceedings, I had furnished them with a copy of this Letter of the 23d of January; and although the tone of unwarranted assumption and unfounded and injurious imputation in which they thought fit to address me in reply, prevented the possibility of my holding any further communication with them, yet Mr. Ellice, in his capacity of Trustee, gave to Mr. Wilson personally, and afterwards, at his request, to his Solicitor, explanations, in substance the same with those which I have since given to the Creditors and to the Stockholders. The Solicitor’s opinion, as now disclosed by the Directors, appears to have been moderate and judicious; but I confess myself at a loss to understand upon what principle, under the circumstances stated, and with that opinion before them, Messrs. Thomas Wilson and Co. could have resorted, as they did, to compulsory process of the most offensive description, particularly as it regarded poor Thain, against whom, as well as against me, a Writ was taken out for 16,000*l*, and who, notwithstanding the serious illness under which he was known to be suffering, and in the midst of that mental irritation which has since become aggravated into actual madness, must have been dragged to a prison, if I had not found two Friends who had sufficient confidence in us, to become answerable for him, as well as for myself, and each of whom was able to justify bail to the amount of 32,000*l*.

It is not now very material, nor is it my present purpose to inquire, what may have been the motive or the object of this summary proceeding, which it appears was adopted by the Agents without any instructions from their Principals;—whether it could have been, that personal offence was taken, or that any feeling of wounded self-importance required atonement, because a man in my unfortunate circumstances should presume, even in self-defence, to repel false and calumnious allegations, and to resist imperious demands, with which compliance was impossible; or whether it was merely an experiment, to try if any advantage could be obtained, or any concession extorted, by means of personal annoyance:—but *it is* material to refer to the consequences which have ensued, and of which this proceeding has been in a great measure the cause.

" either by accepting the Bills, or by offering to secure the amount by the transfer of Stock on any terms."

After these Documents had been read, the first Resolution proposed (with certain reservations, entirely unimportant and unobjectionable, so far as I am concerned), was, "That in the opinion of this Meeting, it is expedient, and the President of the Corporation is hereby instructed without delay to accede to the Assignment executed by Simon M'Gillivray, Esq. on the the 2d of February last."

To which an Amendment was moved by Mr. Leslie, and seconded by Mr. Moffatt—"That the Directors be instructed to take the opinion of Counsel in London, as to the right of bringing back to the general mass of the Estate, the payments made to Samuel Gerrard, Esq. and to J. H. Dunn, Esq. or his Representatives, or to any other person, on the eve of, or after Bankruptcy, and to report the same to a General Meeting of Stockholders, to be called for that purpose on the first Monday in July next."

Thus, instead of the high ground taken, and the arbitrary proceedings dictated by the leaders of the majority at the Board of Directors, in sanctioning prosecution, and attempting to sue out a Commission of Bankruptcy against me, they now resorted to *evasion* and *procrastination* of the question, the effect of which they probably knew would have been the same with that of the more open course of hostility previously pursued.

On putting the question, a division took place, and the votes of the Stockholders, and the shares of Stock held by the respective parties, were declared as follows, viz.

Had it not been for the sake of supporting the measures already adopted by the Agents, and on the plea that it was impossible a House of respectability could be capable of acting so harshly, without *some ground* to justify their conduct, I am informed that the majority of the Directors could not at any time have been induced to concur in sanctioning their proceedings; and had it not been for the impression produced by the knowledge of my being prosecuted by the Agents, and of the Directors having refused to accept my Assignment, thereby setting an example to other Creditors, who had delayed, or who may have been doubtful about executing the Deed, and who may thus have been led to imagine that some benefit might be derived from pursuing a similar course—it is more than probable that every one of those Creditors would ere now have assented to my arrangements. In short, if it had not been for the consequences which can be distinctly traced to those proceedings of Messrs. Thomas Wilson and Co., I firmly believe that the difficulties, now perhaps insuperable, which have since arisen, and which are hereinafter stated, might have been prevented.

It is therefore not in complaint of any personal annoyance inflicted on myself, however unmerited I may consider it to have been, nor yet in impeachment of any proceeding authorized by law, that I offer these observations; but in vindication of my own Character, and in justification of the Statements which I produced, and the prospects which those Statements warranted me in holding out to the Creditors, when my propositions for the Assignment of my Estate were first submitted to them, I now deem it requisite to explain, and to trace to their origin, the proceedings which have marred those prospects, by impeding, and rendering precarious, if not finally frustrating, every beneficial result of my arrangements.

	<i>Shares.</i>	<i>Votes.</i>
For <i>immediately</i> acceding to my Assignment	2349	522
For <i>six months' postponement</i>	484	142
Majority	1865	380

This of itself appears sufficiently decisive, the minority holding only about one-fifth part of the Stock upon which votes were received; and if I could add the 315 shares held by Messrs. Carroll and Brevoert, and 163 shares held by myself and my late Firm, but in right of which my Trustees did not claim to vote, then the majority would be increased to 2343 shares, and the minority would be reduced to about one-sixth part of the Stock for which representatives were present.

In order, however, to see the remarkable unanimity of the *Stockholders* on the question thus referred to them, it may be well to analyze the composition of this minority a little further; and the information which I have received, enables me to show of whom it actually consisted, and what interest they held personally in the matter at issue.

The minority so holding 484 shares, consisted of the following classes and persons, viz.

	<i>Stock.</i>	<i>Value.</i>
<i>Three Directors</i> —Messrs. <i>Leslie, Moffatt, and Porteous</i> —		
holding of the Bank Stock	40 shares	£ 1500 0 0
<i>Two other Proprietors</i> , holding	30	1125 0 0
Total, <i>actually present</i> , holders of	70	£ 2625 0 0
Partners and other connexions of Messrs. <i>Leslie and Moffatt</i> ,		
whose Powers of Attorney were held by those Gen-		
tleman	78	2925 0 0
An absent Proprietor, whose Power of Attorney was held		
by one of the above-mentioned "two other Proprietors"	45	1687 10 0
Minority so far	193	£ 7237 10 0

Besides the following, viz.

<i>Peter Burnett</i> , Esq. who is in England, and whose Power		
was held by <i>Mr. Leslie</i>	111	4162 10 0
<i>Estate of R. Patterson</i> , of which <i>Mr. Moffatt</i> is the Admi-		
nistrator	180	6750 0 0
Making the whole	484	£ 18,150 0 0

I state the *two last sums* separately, because, from Mr. Burnett's own Letters to me, I have cause to believe that his Attorney voted in opposition to his opinion, as well as in disregard of his interest; and Mr. Moffatt being the representative of the Estate of R. Patterson, had the power of voting as he thought fit, without reference to the parties concerned, and without prejudice to any interest of his own.

Leaving out, therefore, these 291 shares, over which Messrs. Leslie and Moffatt had a temporary controul, but in which they had no actual interest, it appears that the parties actually present and voting at the meeting, held 70 shares, or less than 1-70th of the whole Stock, and their absent connexions, whose powers they held, were possessed of 123 shares, or less than 1-40th, the whole party together holding 193 shares, or about 1-26th of the Capital of the Bank; and taking the Debt of my Firm, as before mentioned, at 16,000*l.* we shall find that

The interest of <i>the party</i> in that debt, was 1-26th, or	-	-	-	£ 615	8	0
If 12 <i>s.</i> 6 <i>d.</i> in the pound were paid, their loss would be	-	-	-	230	16	0
And the value <i>to them</i> , of carrying the question upon which the ruin of the						
Estate was hazarded, could only, at the utmost, have been 9 <i>d.</i> in the						
pound; or	-	-	-	-	-	-
					23	1 7

It was the same party who thus appear to have had so trifling an interest at stake, namely, Messrs. *Leslie*, *Moffatt* and *Porteous*, who had on all occasions led that majority of the Directors which dictated to the Board the proceedings hereinbefore detailed. Messrs. *Leslie* and *Porteous* were a majority of the Committee of three Directors sent to confer with my Trustees; and who reported to the Board, that the proceedings against me in England ought to be followed up; and it was *Mr. Moffatt* who, on *both the occasions* already mentioned, between the publication of the requisition for the General Court, and the holding of the same, brought forward at the Board of Directors the proposition to instruct their Agents to sue out a Commission of Bankruptcy against me, and so to prevent the possibility of any interposition by the General Court, for the protection of their own interests against the ruinous consequences of throwing my Estate into the Court of Chancery.

It thus appears, that *those three Directors* have, throughout these proceedings, been the *leaders* of the majority of the Board; and I admit that *I* have no right to impugn the conduct of either the *leaders* or the *followers*, in that respect; but *I* have a right to explain the transactions which have taken place, involving the interests of my Estate, and the injury which has been inflicted upon my Creditors. I speak of my *Estate and my Creditors*, rather than *myself*, because, as to any

interests of my own, I am extremely doubtful whether it would not have been much more to my advantage, to have passed *at once* through the ordeal of a Commission of Bankruptcy, which, if *other Dissident Creditors* shall follow the example of these Bank Directors, it may, after all, be impossible to avoid, rather than to remain, as I now do, with my arrangements for the benefit of the Creditors, and for my own release, still left in a state of suspense, by the indecision, or the prejudice, or the ignorance of their own interest, which has hitherto prevented some few of the Creditors from giving their assent to my Deed.

It may therefore be argued, that these Gentlemen (whatever may have been their intentions) have really, in trying to drive me into a Commission of Bankruptcy, been trying to do me an act of kindness; and I must do them the justice to say, that I have heard they disavow any feeling of personal hostility towards me. I have also been informed, that in the recent proceedings at the Bank, *other* persons were, more than myself, the object of that persevering hostility, which was directed in the first instance against me, only because it was *through me* that those other persons could alone be reached.

I have heard that this hostility was particularly aimed at *Mr. Gerrard*, the late President of the Bank, who is one of my Trustees; and I am induced to think this the more probable, from my own knowledge of the discussions and the feelings of parties at the Board, previous to the election of Directors in the year 1826, during a part of which discussions I was a Member of the Board, and in which the *leaders* and the *followers* of the party were (except a few changes arising from new elections) the same as in the recent proceedings against myself.

Now it is not necessary that I should set myself up as the advocate of *Mr. Gerrard's* administration, although it may have been, as I have always understood it was, an amendment upon that of his predecessor, without perhaps being in itself perfect, since perfection in such arrangements is seldom attained, otherwise than by progressive steps of improvement, arising from experience; and it should be recollected, that *banking* is still, in *Canada*, rather a matter of experiment, than an established or well-understood system. If, however, the *price* of the Stock, and the payment of *Dividends*, be any criterion of the prosperity of a banking concern, then the Stockholders will be the best judges of the comparison between the successive administrations which have regulated the transactions of the Montreal Bank; and if holding a large interest in the Stock, be any test of sincerity in promoting the prosperity of such an institution, then the comparison between *Mr. Gerrard* and at least *one* of the self-styled reformers of his system, is rather striking. At the commencement of the operations of the party, *for the benefit of the Stockholders*, by impeaching the conduct of *Mr. Gerrard* as President, *he* was, as I am informed (and by referring to the Transfer Book, the fact may easily be

ascertained), the holder of a very considerable sum of Bank Stock; while *Mr. Moffatt*, who was the mover on the occasion, had previously, as I understand, taken the precaution to sell out the whole of *his* Stock, except the mere qualification of *ten shares*. These proceedings against *Mr. Gerrard* were repeatedly defeated at the Board, but always brought forward again, because it seems to have been the practice of that party, that a question once decided, was not left at rest, but was always subject to be revived, whenever there might seem to be a chance of its being carried—by manœuvre or surprize—*per fas aut nefas*—if on any occasion *the party* could hope to muster a majority of the Board.

An instance of this practice has already been stated, in the *repeated* attempts to dictate to the Board of Directors, Resolutions which, it was supposed, would drive *me* into a Commission of Bankruptcy, without waiting for the decision of the general meeting of Proprietors, although summoned for the special purpose of giving that decision. In the case of *Mr. Gerrard*, through means of the departure from Montreal of some of his friends, and the introduction in their place of new Directors, in the election of whom, be it remembered, the Stockholders had no voice, because such vacancies between the annual elections, are filled up by the Board of Directors—through these means, and by the perseverance of the party against him, they finally succeeded *at the Board*; but at the succeeding annual *general meeting*, their proceedings, although nominally approved by *one* Resolution, were, *in fact*, rescinded and rendered nugatory by *another*; and thus, although not so signally as in the recent instance, the majority of the Directors was defeated by the decision of their constituents.

If, therefore, it should in courtesy or in charity be supposed, that in those repeated instances, the leaders of the party at the Board of Directors were in reality actuated by no other feeling than a stern sense of public duty, and a due regard to the interests of their constituents, then it must be admitted that they have been rather unfortunate in the decisions so repeatedly pronounced by those constituents upon their measures. If, on the contrary, however, it should appear to the Stockholders impossible not to draw the conclusion, that the *supposition*, with the quotation of which, from my Letter of the 25th of July, this Letter is commenced, was well founded—and from their decision, it would really appear they *have drawn* that conclusion—then, although it may to *them* be of slight importance, whether the mark aimed at by Messrs. *Leslie, Moffatt* and *Porteous*, was *Simon M'Gillivray* or any one else, yet I submit, *it is* of some importance to consider, whether, in these proceedings, the trust delegated to the Directors has been made subservient to the gratification of party spirit or personal enmity, no matter against whom directed; and whether the concerns of an institution, conducted on such principles, are likely to prosper.

It appears to me perfectly demonstrated by the facts herein stated, that the interests of the Proprietors *have been* trifled with and sacrificed, by a *party* who had obtained a temporary ascendancy in the management of the Bank, but who had scarcely any interest in its prosperity; and whether their conduct is to be imputed to ignorance, or prejudice, or obstinacy, or party spirit, I care not, but I think it quite impossible to imagine, that it could have proceeded merely from a due regard for the interests of those constituents whose benefit they professed to have principally in view.

The judgment of those constituents themselves, has been sufficiently pronounced by the decision of that General Meeting, at which it may almost literally be said, that *the party* stood alone, with all the Stockholders against them; and leaving to those Stockholders, as the parties chiefly interested, to consider whether they will apply any remedy, or adopt any precaution, to prevent the future mismanagement of their own concerns, I shall now return to the consideration of *yours* and *mine*; and the first inference which I would suggest—from the conclusion which appears to have been drawn by the Stockholders—and my chief reason for introducing so minute a detail of the proceedings which led to that conclusion—is the expectation, that it may produce some effect on those Creditors of my Firm, who have not yet executed my Deed of Assignment, and who may have been deterred from so doing, by the example of the Bank, and the hope of sharing in some imaginary benefit to be derived from refusing their assent to my arrangements.

Those Creditors, therefore, who may have been thus influenced by the example of the Bank, or the opinions of any individual Directors, will now, I trust, be satisfied, so far as the same example, or the decision of the Bank Proprietors can satisfy them, that no benefit can be expected to arise to any party, either from a repetition of compulsory proceedings against me, or from a continuation of the state of suspense in which my arrangements for their own benefit now remain, waiting for their decision. The Bank Directors, and their Agents, as the holders of protested Bills of Exchange, drawn by myself, and payable in London, although they had no legal right to any preference over other Creditors, had yet undoubtedly greater facilities in suing out summary process, or in establishing summary proof of their claim, than any other Creditor can have; besides, that they had the opportunity of indulging any propensity which might prompt them to litigation, without being deterred by the consideration of expense, because *that*, as well as the injury inflicted on my Estate, would fall to be sustained, not by themselves, but by their constituents; and when, with all these facilities, and without any forbearance or mitigation in taking every advantage of them, these powerful men have failed in extorting any compromise or concession from

me, is it likely that any other claimant can be more successful? On the contrary, is it not manifest; that when no compromise or concession *can* be made—and for the most conclusive reason, because *every thing* has been already conceded—it must be equally useless, so far as *I* am concerned, for any Creditor to resort further, either to coercive measures, or to experiments upon my endurance of a continued state of suspense?

In regard to the history of my unfortunate concerns in Canada, the large fortune which I voluntarily surrendered for the payment of the Debts of my Partners, and the arrangements which I suggested for the benefit of the Creditors, I have very little explanation or remark to offer, in addition to the Statements laid before them at Montreal in January 1826, and my Circular Letter of the 25th of July, already referred to. In order, therefore, to avoid occasion for repetition, as well as for the information of those Creditors residing at a distance from Montreal, who may not have had access to these Documents, I shall annex them as an Appendix to this Letter; and I am further induced to adopt this course, by the wish to give every person concerned, the opportunity of comparing with each other, the Statements which I have from time to time produced, and of considering the effect and the benefit to themselves, of my voluntary propositions, as compared with the utmost advantage in the power of any party to extort by the most rigorous legal proceedings.

In Appendix C, page 13, I allude to *some* of the questions which, in the event of my having recourse, or being driven to a Commission of Bankruptcy, will inevitably cause delay, and litigation in the Court of Chancery; and several other intricate questions have since arisen, in addition to the intrinsic difficulty of which, and to the proverbial caution—not to say slowness—of that Judge for whose decision they must wait, there are circumstances connected with the state of the Law itself, which merit the most serious consideration of every party having any interest in these complicated concerns.

The Bankrupt Law of England has recently undergone considerable modification. The last Act, “to Amend the Laws relating to Bankrupts,” (6 of Geo. IV. cap. 16), passed on the 2d of May, 1825, commences by repealing twenty-one former Acts of Parliament, from which certain clauses are then re-enacted as new provisions,—some with, some without amendments,—and other clauses are added; and the Act so framed, constitutes the present code of Bankrupt Law. Now, one consequence of this very recent alteration of the Law is, that there are yet few decisions on record, whereby, in intricate cases, to ascertain the operation of the *new Law*; and the *old Laws* being rescinded, the cases which had been decided under *them*, are no longer precedents. Acts of Parliament are sometimes obscure in their provisions, and imperfect in their construction; and until cases

arise by which their operation may be construed, different Counsel may construe them differently, and it may remain doubtful which of the learned Gentlemen is right.

This appears to have been the case with some of the questions put to Counsel by Mr. Ellice and myself, on the one side, and by the Hudson's-Bay Company on the other. (See Appendix C, page 14). These questions, in fact, involve cases which have not yet been decided; and if the Creditors are to *wait*, and to *pay* for obtaining the decision ~~of them~~, and so establishing precedents for other cases, then it must be obvious, that all hope of any beneficial result must be even more remote than I have formerly represented it to be.

In consequence of the opinion so given to the Hudson's-Bay Company, that my Assignment was, or may be held to have been, an act of Bankruptcy, and therefore that it would not be safe for the Company to transfer my Stock otherwise than under the sanction of a Court of Equity, the Governor and Committee have given me notice, that they will not permit the transfer of the Hudson's-Bay Stock standing in my Brother's name, and assigned by me to the Trustees. It is quite useless to remonstrate, or to argue on this subject, unless all the Creditors shall have become parties to my Deed; and in the mean time, the Stock is absolutely locked up from sale or transfer, until, as the case may be, either the Governor and Committee shall be satisfied that a final Bankruptcy is impossible, or until a Bankruptcy shall actually take place, and the Stock be disposed of by order of the Court of Chancery, or until the decision of the Court shall be obtained, on a Bill to be filed by the Trustees, to enforce the transfer of the Stock. Now, by either of the *two latter* processes, it is not for me to say *when* any part of this Stock may become available to the Creditors; and the only possible means of effecting the *former*, is to produce proof that every one of the Creditors has actually executed the Deed, or otherwise released me, so as to prevent any question about the possibility of a Bankruptcy; and if any of the Creditors should have been holding off, and waiting for the inducement of a Dividend being declared, before they execute the Deed, I beg to submit to their consideration the following brief view of the case, viz.

1st, No Dividend can be received from any funds in England, till the Hudson's-Bay Stock shall be disposed of.

2nd, The Hudson's-Bay Stock cannot be disposed of, until *all the Creditors* shall have executed the Deed.

3rd, Certain Creditors hesitate or delay to execute the Deed, until they are induced so to do by the payment of a Dividend;—and therefore,

4th, No Dividend can be expected, and no settlement can take place.

Until these matters shall be decided in some shape, any idea of *my* leaving England is out of the question. Whether it is to be my lot to surrender to a Commission of Bankruptcy, or, as the Attorney of my Trustees, to dispose of the Hudson's-Bay Stock, or to conduct a suit in Chancery to enforce the transfer thereof by the Hudson's-Bay Company, each and either of these duties is one which cannot be performed by deputy, and which in fact cannot be performed by any one but myself; so that whatever loss may arise, and much has already arisen, from delay in adjusting accounts and collecting debts in Canada, as well as in disposing to advantage of the real Estate in that Province, yet the Hudson's-Bay Stock, and the question of Bankruptcy, are the main objects to which my attention must be directed; and I can assure the parties concerned, that it has entirely arisen from personal consideration *for me*, that the Stock pledged as security for money borrowed, has not long since been irrecoverably sacrificed, nor do I at all know how long I may be in a condition to preserve it, unless I am enabled to take some decided ground in regard to the Deed of Assignment.

The amount of Hudson's-Bay Stock *now* actually forthcoming out of my Estate—including the surplus of the amount so pledged for securities, as well as that standing in my Brother's name, and which is thus *impounded* by the Hudson's-Bay Company—has already been repeatedly stated; but as the Statement is of so much importance, I will introduce it here in a more detailed shape, as follows, viz.

My original Statement of the Hudson's-Bay Stock, (see Deed of Assignment, Schedule C, No. 3), shows that the sum originally "placed			
"at the disposal of, and belonging to Wm. M'Gillivray and Simon			
"M'Gillivray, (exclusive of certain sums in trust)," was			
			£ 62,500 0 0
And that "there stood previously in my name 5900l.;" but the actual sum			
was			
			5954 13 4
Total			
			£ 68,454 13 4
Of which there has been transferred to S. Gerrard, Esq. and the Representatives of J. H. Dunn, Esq.			
			9000 0 0
Balance remaining—Stock			
			£ 59,454 13 4

Whereof the following is pledged for Loans, viz.

To Messrs. Smith, Payne and Smiths, for	-	-	-	£ 9500	5000 0 0
To Messrs. Overend, Gurney and Co.	-	-	-	30,500	16,500 0 0
To the Hudson's-Bay Company	-	-	-	21,000	12,000 0 0
Loans				£ 61,000, on	£ 33,500 0 0
Carry forward				-	£ 33,500 0 0

Brought forward	-	-	-	-	£33,500	0	0
Stock standing in the name of the late W. M'Gillivray, Esq.	-	-	-	-	20,833	6	8
And of E. Ellice, Esq. against certain sums paid by him to M'Tavish, Fraser and Co.	-	-	-	-	5121	6	8
Total remaining as above—Stock	-	-	-	-	£59,454	13	4
Subject to the payment of Loans for—Cash	-	-	-	-	£61,000	0	0

Subject also to the payment of a Balance due to Mr. Ellice, on a Settlement of Accounts, in regard to which, a reference to the other Trustees may become necessary, but which, for the sake of an estimate, I shall suppose to be 10,000*l.*; thereby increasing the incumbrances to 71,000*l.*; and the *net value* of the Stock would be as follows, viz.

At 200 per cent.	£118,909	6	8	, less £71,000, is	-	-	£47,909	6	8
At 225 —	183,773	0	0	, less the same, is	-	-	62,773	0	0
At 250 —	148,636	13	4	, less the same, is	-	-	77,636	13	4

And supposing Exchange at 8 per cent. premium, then

At 200 per cent. the surplus of £47,909	6	8	Sterling, would be—Currency	£57,491	4	0		
At 225 ditto ditto	62,773	0	0	ditto ditto	75,327	12	0	
At 250 ditto ditto	77,636	13	4	ditto ditto	93,164	0	0	
The amount of the Debts, as already stated in page 5, is 230,000 <i>l.</i> on								
which a Dividend of 5 <i>s.</i> in the pound, would be					-	57,500	0	0
6 <i>s.</i> 6 <i>d.</i>					-	74,750	0	0
and 8 <i>s.</i>					-	92,000	0	0

And *some one* of which Dividends, according to the price obtained for the Stock, might, but for the impediments which have arisen, from the hostility of some and the supineness of other Creditors, have now been actually in course of payment; whereas, if these impediments are to wait for the decision of the Court of Chancery, so also must all hope of receiving the Dividends, until that decision shall have been given.

I do not know that I can say any thing to give additional weight to this statement, with any Creditors who will judge for themselves, and who will look coolly and dispassionately at their own interest. There are, however, some classes to which it is right to refer, both of Creditors who may have views and interests distinct from the general body, and of persons who are in fact Debtors, setting up claims as Creditors, and trying to put the *bonâ fide* Creditors on a false scent, in hopes to escape or evade the settlement of my claims, or rather those of my Creditors, against themselves.

The former class consists of Creditors who hold, or who may be advised that they hold, engagements constituting what are in Canada called *hypothecary claims* against the real Estate of my late Brother, or of Mr. Thain, in that Province, since it appears that all notarial engagements contracted in Canada, amount to hypothecary claims, or mortgages on the whole real Estate of the contracting party; and I have been informed, that the expectation of establishing such hypothecary claims, has prevented some Gentlemen who have verbally, and in writing, declared their assent to my arrangements, from actually executing the Deed. To these Gentlemen I have only to recommend the consideration of a Clause* in the Deed of Assignment, by which they may see that such claims, if valid, may remain in force, notwithstanding their execution of the Deed; and if there should be any doubt about the real Estates in Canada paying the whole amount of such claims in full, then the parties entitled to the same, are, alike with the other Creditors, injuring their own best interests, by leaving in hazard the validity of the Assignment of my Estate for the payment of the House's debts. In short, they are really hazard-ing a substance to grasp at a shadow, since it is impossible for any of them, or for me, to ascertain by anticipation, what the amount of these hypothecary claims may be found to be.

The latter class consists of certain Partners and retired Partners of the different Firms and concerns of which I have been a Partner, and for the payment of whose Debts I have divested myself of the whole of my own Estate, as well as my Brother's, whilst these Gentlemen, instead of manifesting any disposition to follow my example, are even attempting to set up claims, as if, instead of being Debtors, they were Creditors of my Estate. The history of my connexion with these Gentlemen, and the financial difficulties in which the wasteful extravagance of some of them involved the Firm whereof they and I were mutually Partners, are sufficiently stated in Appendix, B, page 3, as also the fact of my having assigned to them certain shares of profit on the Trade of the Hudson's-Bay Company; in regard to which it is there stated, that "I consider nearly the whole of these Shares

* If any other of the said Creditors of the said late Honorable William M^cGillivray and Simon M^cGillivray, enumerated in the aforesaid Schedule marked A, do, or shall possess any hypothecary security for the whole or any part of their said Debts, then such Creditor or Creditors, at the time of signing these presents, or ratifying and confirming the same as aforesaid, shall state and produce such hypothecary claim; and the same, and the nature and particulars thereof, shall be entered, on a Schedule to be marked D, and to be signed by the party producing the same, and by the said Notaries, and to remain in the custody of one of the said Notaries; and in regard of such hypothecary claims so stated, and produced, and entered in the Schedule marked D, the Creditors holding the same, and who shall sign these presents, or ratify and confirm the same, shall not, by reason of any thing therein contained, lose any benefit or advantage from their respective hypothecs, nor be debarred from enforcing them, and all rights derived from them, but shall and may, notwithstanding these presents, avail themselves of their said hypothecs as fully, to all intents and purposes, as if these presents had not been made.

" still liable for the engagements of the House, and that I may probably be " enabled to retain them for the benefit of the Creditors." And in a subsequent Statement, attached to my Deed of Assignment, as Schedule C, No. 4, it is further stated in explanation, that " these Shares are only Annuities, payable to the " Partners by Mr. Ellice and myself, being in fact a charge upon our Hudson's- " Bay Stock, and that by *our* management, if the Deed of Trust shall give us " sufficient power, I think these means may be converted to the benefit of the " Creditors;" but it is added, that " we shall probably have *questions to try* with " these individuals, and it is only through *my peculiar* Claims on them, that any " part of this sum can be rendered available to the Estate."

I now find these questions, which I anticipated, are attended with more difficulty than I at that time expected; but my opinion as to the merits of the case, remains unchanged, although those merits cannot be brought to issue until the point be decided, one way or another, as to the ratification of my Assignment by all the Creditors, or the resort to a Commission of Bankruptcy; and *these Gentlemen* availing themselves of this state of uncertainty, and of the forbearance of the Creditors in regard to *them*, are endeavouring to set up Claims against the House, as a pretext for the attempt to hold those *Shares* for their own benefit, instead of surrendering them for the benefit of the Creditors.

In order to shew the merits of this case, it is not needful that I should enter into any detailed Statement as to the Accounts of individual Partners. It is sufficient to refer to the facts already stated. None of these Gentlemen brought any Capital into the House. They have drawn out large sums, until at length the means were wanting to supply their continued demands. The large property surrendered by me, to pay engagements which were originally *theirs* more than *mine*, is still in existence, as a separate Estate, to a considerable amount, besides the heavy engagements which had previously been paid by my Brother and myself; and after absorbing *the whole of our* property, the Partnership Debts make the House *still* insolvent. How then can any Partner of the House have any claim on my Estate, or any right to withhold from the Creditors any separate property to which he might have been entitled, if the House had been solvent? This is the *plain* question, whatever attempts may be made to mystify it by these Gentlemen, or by their Lawyers; and the remedy is in the hands of the Creditors, to whom all other Partners are, or ought to be, as liable as I am, for the debts of the House.

Mr. Shaw is the only one of these Gentlemen who has yet been prosecuted by any of the Creditors; and being absent from Canada, he has hitherto been enabled, by the Law's delay, to resist the process. Mr. McLeod, who is in Scotland, has assigned his Shares to his Brother-in-Law, Mr. Peter Burnett, who has served me

with notice of this Assignment, and given me intimation, that he will require a settlement of Mr. M'Leod's claims before I leave England; which I presume means, that he will apply to the Court of Chancery to impede my arrangements, in some shape, with a view to obtaining a settlement for Mr. M'Leod; and Mr. Henry Mackenzie has now given notice to the Trustees, of some objections on *his* part to my Assignment, and some imaginary complaints and claims, in virtue of alleged breaches of covenants by his Partners, in the Firm of M'Tavish, M'Gillivrays and Co.; whilst I have heard, that one of his Brothers, who is himself a retired Partner, has commenced some process, to establish an hypothecary claim against my Brother's Estate.

If any of these Gentlemen could discover a surplus of assets belonging to the Firm, and any attempt on my part, to retain for my own benefit more than my due share of the same, it would, I admit, afford just cause of complaint on their part against me; but it is quite impossible to object to my arrangements upon any such ground, or to maintain any claim on the part of these Gentlemen to any part of that property which I have assigned for the benefit of the Creditors. It seems almost needless to argue against such an absurdity, as that Partners of an Insolvent Firm should be Creditors of the same Firm; and yet such would be the effect of the claim which I understand is set up by Mr. Henry Mackenzie—but it is really a question in which *I* have no interest. I have assigned, so far as I was legally competent to assign, the whole of the Partnership Assets, for the payment of the Partnership Debts; and those Assets, so far as I could find any in existence, being totally insufficient for the payment of these Debts, I have further assigned the whole of my own and my Brother's Estate, to make up the deficiency. How then *can any Partner* claim any part of those Assets which are totally insufficient for the payment of the Creditors?

But further, there are the *Hudson's-Bay Shares*, and some of these Gentlemen may perhaps expect, that, by setting up such imaginary claims, or preventing some Creditors from giving effect to my arrangements by the ratification of my Deed, they may induce the Trustees to consent to some compromise or discharge to themselves, without insisting upon the surrender of their property. Mr. Henry Mackenzie in particular, having no property to surrender, (since he has been insolvent in a Partnership into which he entered on the termination of his Partnership with me, and to enable him to form which, Mr. Thain and I, imprudently enough I admit, advanced him capital); but possibly expecting, that the interposition of impediments and delays, by which *he can lose nothing*, may have the effect of extorting some composition out of his claim on the Hudson's-Bay Share, which *I maintain* belongs to the Creditors—seems disposed to try the effect of throwing a

tub to the whale, by impugning my arrangements, whilst his Brother's fraternal partiality may, as I am advised, by possibility engage *him* in proceedings rather hazardous to himself.

These differences *with Partners*, however, need not at all interfere with my arrangements, and the only object is, that the Deed should be ratified by the *real bonâ fide* Creditors. No Partners *can* establish any claim against me, nor can they even prosecute me; and the Creditors and the Trustees, if the Deed shall be completed, will have in their own discretion the most cogent arguments that can be addressed to refractory Partners. It must be evident, as I have already stated, that since I have relinquished the hope of any reversionary benefit from my own Estate, I have really no personal interest in these questions. I have surrendered all *my* right and title to *these Shares*, as well as to the rest of my property, and I have offered to do every thing in my power, to render them available to the Creditors; but if the Creditors shall think fit to relinquish *that*, or any other claim, for the benefit of Mr. Shaw, or Mr. M'Leod, or Mr. Mackenzie, I have no wish to interfere in the matter, provided only, that my own release is previously confirmed by all parties. In the event, however, of my having recourse to a Commission of Bankruptcy, the case will become very different; and until *that point* shall be finally ascertained, I shall resist any settlement, or compromise, or release, with, or to any of my Partners, or retired Partners; and such is the "glorious uncertainty of the Law" on Partnership questions, and such is the intricacy of conflicting interests in these concerns, that I cannot presume to pronounce who may, or may not, be found to be liable as Partners, although I think it very possible, that *some* Gentlemen, who have considered themselves, and whom I have considered Creditors, may find that they will not be admitted to rank as such before the Commissioners of Bankruptcy, and that they may even be held to be still Partners.

No further delay would have arisen on my part, in taking *the first step* to release *myself* at all hazards from these questions and difficulties, but that in the same Letters which apprise me of the determination of the Bank Proprietors, at their general meeting, to accept my Assignment, and assent to my release, the Trustees in Canada express to me their entire confidence, that the example will be followed by all the other Creditors of the House; and they urge me in the most earnest terms, for the sake of my friends who are Creditors, and who have such deep interests at stake, to endure the state of suspense and uncertainty in which I am left, a little longer, and to refrain from seeking my release through the process of Bankruptcy, until, as *they* confidently expect, it may be obtained by the influence of reason and common sense. I am not by any means so sanguine in my own expectations, since I have too much experience of the lengths to which

some men may be led by prejudice combined with ignorance, besides that I have suggested some sources of probable misrepresentation by parties interested in misleading the Creditors; and yet, in consideration of the request of the Trustees, and their representation of the ruinous consequences to so many of my friends, if my Estate is thrown into the Court of Chancery, I have determined to give them one more chance to carry through the arrangements under my Deed of Assignment, and therefore I shall wait a reasonable time for the result of this further and final appeal, which I shall beg permission to conclude with the following Extracts of Letters which I have at different times addressed to the Trustees, and which I now submit to the consideration of the Creditors, viz.

From Letter of 22d August, 1826.

"Where, I would ask, is the discrepancy, or the unexplained difference, between my first voluntary Statement, and this my Ultimatum?—Where is the point which any Creditor has gained, or can now gain, by resisting my arrangements?—What advantage could these arrangements ever afford me, unless they should first pay every man 20s. in the pound?—Where is the value to me, unless in point of feeling of that confidence, on which, by some Gentlemen—not by those who bestowed it—so much stress has been laid?—What course is now most advantageous to the interests of the Creditors themselves, without reference to any supposed interests or feelings of mine?—In answer to each and all of these questions, I will maintain without fear of contradiction, not only that I am entitled to all the confidence that I ever claimed, but further, that from the beginning, and throughout the whole of these transactions, I have been the person conferring most important benefits on the Creditors, instead of receiving any at their hands. How I have been requited, let my would-be persecutors* answer to the individuals and the families whom they are about to injure beyond remedy, in the attempt to oppress me; and who, let me ask, shall impute to me any blame, for resorting to the only protection within my reach, against such vindictive proceedings?"

From Letter of 30th August, 1826.

"In my very first proposal to the Creditors, I offered them more than, they now find, the utmost rigour of the Law can extort from me. I offered them my time and my labour, in addition to my property; and this I did, not ignorantly, but meaning to make every possible exertion for their benefit, without much thought of my own; and it is only when driven to it by most unjust and vindictive conduct in some of those whom I have thus sought to benefit, that I at length turn my attention to my own security, and to ulterior views; but being so driven, and after the question of becoming a Bankrupt, or not, has to me become almost matter of indifference, it cannot, I think, be reasonably expected that I should much longer remain at the mercy of the Gentlemen who have hitherto

* This alluded to the Majority of Bank Directors.

“ refused their assent to my Deed, and who, if they shall still persist in their pertinacity,
 “ will, I think, hereafter find to their cost, that their share of the injury which they may
 “ thus inflict upon other persons, will, of necessity attach to themselves.”

From Letter of 21st October, 1826.

(After the information herein before given, see pages 15 and 16, in regard to the transfer of Hudson's-Bay Stock, it proceeds):

“ *This* I submit, as rather a cogent argument, *quoad* the interests of the Creditors;
 “ and if any interests or feelings of *mine* should at all be taken into consideration,
 “ I would only seek to refer to any Gentleman among the Creditors themselves, whether
 “ it is reasonable to expect, that a man who has it in his power to obtain by a
 “ certain process, a final discharge from claims which otherwise he can never hope to
 “ satisfy, shall, without obtaining such discharge, and with his eyes open, render himself
 “ again the slave of these concerns, remaining still at the mercy of those Creditors whose
 “ refusal to release him, sufficiently shows what he has to expect from them. On this
 “ subject I have nothing further to state. Those Creditors who, after the appeals which
 “ have been made to them, shall for any cause, or on any pretence, *delay* to accede to our
 “ arrangements, must be held to have *refused* so to do, and to *them* must be imputed the
 “ consequences, whatever these consequences may be.”

From Letter of 14th November, 1826.

“ I am getting more anxious every day for some prospect of a termination to these
 “ difficulties; and I look for something decisive from the Bank, after you shall have com-
 “ municated to the Directors my Letter of the 22d of August. Through their Agents first,
 “ and themselves subsequently, all the time since my arrival in England, has been lost, as
 “ to any useful purpose for realizing the Estate, and the further continuance of this state
 “ of things ruins the Estate, wastes *my* time, and benefits *no* person. What do the Parties
 “ wish or expect from their pertinacity in this matter? They cannot *drag me* to Canada,
 “ and the worst injury they can inflict upon me, is the very thing to which I look as my
 “ ultimate relief—a Commission of Bankruptcy—only I am deterred from *yet* seeking that
 “ mode of relief, merely by consideration of the ruinous consequences in which it would
 “ involve those of the principal Creditors who are my personal Friends; but if any Gentle-
 “ men shall think that this, on my part, is a cry of “*loup! loup!*” I promise them they
 “ will speedily find themselves mistaken; for my endurance of this thing is very *fear* a
 “ close, and the remedy is in my own hands.”

From Letter of 28th November, 1826.

(On being informed that a Case had been submitted by the Bank Directors to Counsel at Quebec).

" The case, altogether, therefore, appears to me so plain, as to require no opinion of Counsel for its elucidation; and if the facts have been *fairly stated* to Mr. Primrose, I cannot doubt as to what must have been his opinion and advice to the Bank; but people are sometimes apt to mis-state cases in which their own interests or prejudices are engaged. The case in point, has from the beginning been grossly mis-stated by the Agents of the Bank; and if the Directors shall adopt their mis-statements, as they began by adopting their compulsory process against me, then it seems probable, that all which has been said and done, will not suffice to keep this unfortunate Estate from being wasted in legal proceedings; and the time which has been devoted by you and by me, to attempt its preservation for the benefit of the Creditors, will have been very unprofitably employed.

" I consider it quite useless, under present circumstances, to send you any further Statements of Accounts, or Opinions of Counsel. - I merely wait for decided intelligence, to take a step which, instead of *opinions*, will require *decisions*, and which will probably take the adjustment of accounts out of *your* hands, as well as out of *mine*."

From Letter of 29th November, 1826.

" I inclose you a correspondence which has taken place between T. Wilson and Co.'s Solicitor and mine; and you'll see by their Queries, that they have taken up the matter with the true spirit of litigation. I shall delay my answers to them, till I hear the result of the questions sent to Mr. Primrose; but whatever my answers may be, I see already it is quite hopeless to satisfy *them*. They can always find some quibble on which to go to Counsel, and Counsel and Solicitors may alike have a feeling towards recommending an application to the Court. Now, if the Creditors will not apply *their own* understanding to the consideration of *their own* interest, but will thus be led by obstinate prejudices, or by parties whose interest it may be to create difficulties, and to incur charges, without regard to consequences—why I must let them have their own way, and I think they will find the result to be, that an Estate which, *but for their own conduct*, might have promptly paid a very large Dividend, if not the full amount of 20s. in the pound, will become—as I understand the Legal Adviser of Mr. *** said last year at Montreal, that '*all Insolvent Estates ought to become—the property of the Lawyers,*' leaving very little for the Creditors, and that little, rather for their heirs, than for the youngest of themselves.

" It is, however, quite useless *for me* to say any thing more on the subject, which, after all, is in reality, Gentlemen, *your own* affair, and that of *the Creditors*, much more than *mine*. I have done every thing in my power to strengthen *your* hands, and to make the merits of the case clear to all who have any interest in it. If *the Creditors* will not stir in their own cause, or if you and they cannot surmount the obstacles started by a few men, who have really very little interest in the question, why *so be it!* but I entreat the decision may not be suffered to remain in a state of interminable uncertainty."

These Extracts contain nearly all I could now say on the same subject, and no change has taken place either in my opinions or in my intentions, since the Letters referred to were written. I am merely induced to defer carrying those intentions into operation, until the Trustees shall have the opportunity which they so earnestly recommend me to allow *them*, for a further appeal to those Creditors who are still Dissentients; and I avail *myself* of the same opportunity, to offer to my Friends,—and to that portion of the Public to which my name and character may be known—as well as to the Creditors, this final explanation of transactions and proceedings, in which, however unfortunate may be the result, and however vexatious may be the details, to me, or to others, yet I have at least the satisfaction to be conscious, that no blame can justly be imputed to myself; but, on the contrary, that the more publicly my conduct may be scrutinized, throughout scenes of no ordinary difficulty, the more conducive ought the proceeding to be, to the success of my future prospects in life.

I remain, with due consideration,

SIR,

Your most obedient Servant,

SIMON M'GILLIVRAY.

APPENDIX.

A

Memorandum, No. 1, submitted by S. M'Gillivray to the Creditors of his House in December 1825.

THE cause, and the melancholy result of my late Brother's last unfortunate voyage to England, are sufficiently known. He went to seek relief from disease and suffering, and he has found it—in the grave. Mr. Thain also had been in bad health for some time before his departure, and besides that *his* voyage was connected with important arrangements in business, it was recommended by his physicians, as the only probable means of his restoration to health.

As a measure of necessity, upon *their* departure; I remained in Canada, and as a temporary substitute during the absence of Mr. Thain, I, for the first time, assumed the management of the concerns of the House in Montreal, with the details of which I had previously been very little acquainted.

My Brother's death, and Mr. Thain's protracted absence, in consequence of illness, having now left me to sustain alone the whole responsibility of these concerns, I have been endeavouring to investigate them; and I regret to be under the necessity of stating, that it is not in my power to produce any satisfactory result of my investigation.

The accounts of some of the most extensive and complicated transactions in which the House has been engaged, and of which accounts Mr. Thain has had the sole charge, have been left much in arrear, and many of the documents necessary for their elucidation, are locked up amongst a mass of *his* private papers; whilst the accounts themselves, and the statements to which I have access, appear to me to be in such a state of confusion, that it seems scarcely possible for any other man, except Mr. Thain himself, to clear them up satisfactorily.

My investigation, however, imperfect as it is, has sufficed to show, that notwithstanding very large sums of capital, which *my arrangements* have realized, and placed at the disposal of the House, within the last five years, yet that the engagements of the late Firm of M'Tavish, M'Gillivrays and Co. and those which have been entered into, for that concern, by the present Firm of M'Gillivrays, Thain and Co. are still very heavy; whilst *some* of the means which ought to be available for the payment of these engagements, are, from the state of the accounts, involved in obscurity, and *other means* which are well known to me, as they are of my own providing, are yet not within my immediate reach; neither are they at once convertible into resources to provide for the payment of immediate engagements.

By my Brother's last Will and Testament, executed a few days before his death, I am appointed his sole Executor, and sole Legatee and Devisee of all his Estate, real and personal; the object of which arrangement, was to enable me the more effectually to apply the whole of his property, if necessary, to the payment of these engagements of his House: but for this purpose, some time is necessarily required. To obtain possession of the property, the forms of law must be observed, both in England and in Canada; and it would ill become an Executor, in whom so much confidence has been placed, and it *might* even be ultimately injurious to the interests of the Creditors themselves, to sacrifice such property without allowing a reasonable time for the realization of its fair value.

Of the engagements of the House, a considerable portion consists of Promissory Notes, whereof several for large sums, are now nearly due; and under the circumstances in which I am placed, I do not feel myself justified in paying these notes, whilst there remains any uncertainty whether I could alike provide for other more remote engagements, and for the security of those Creditors who, on the faith of personal confidence, have placed their funds in the House at interest, and who would be the last to call for payment.

My legal responsibility for all these engagements is, unfortunately for myself, unquestionable; nor do I seek to evade it; but in justice to my own character, I cannot assume the responsibility of the accounts in their present state; neither can I reconcile it to myself, to ask, as personal favours, or on the ground of personal confidence, the renewal of engagements which the House may not ultimately be able to pay; nor yet to pay off these large engagements, at the risk, for ought I can tell, of satisfying some Creditors to the prejudice of others.

In justice therefore to all parties, and in the discharge of the unexpected and most painful duty which has devolved upon me, I see no alternative but to suspend the payments of the House, with a view to obtain time for the due investigation of the accounts, and for the advantageous conversion of the resources, and realizing of the property, by means of which I trust I may ultimately be enabled to make good all these engagements.

Those Gentlemen to whom this paper is addressed, are therefore requested to attend a private meeting at McGillivrays, Thain and Co.'s Compting-house, on Tuesday the 27th of December, at one, *p. m.* in order to take into consideration such measures as it may appear most advisable to adopt for the general benefit of the Creditors at large.

(Signed)

SIMON MCGILLIVRAY.

Montreal, December 1825.

Memorandum, No. 2, submitted by S. M'Gillivray to the Creditors of his House, on the 27th December, 1825.

IN the notification submitted to the Creditors of M'Tavish, M'Gillivrays and Co., and M'Gillivrays, Thain and Co., I have alluded to the "very large sums of capital which *my arrangements* have realized " and placed at the disposal of the House within the last five years." And in order that this allusion may be properly understood, and the circumstances to which it refers, duly appreciated, I think it due to myself, in my present position, to offer a detailed explanation upon the subject.

The embarrassment of our finances originated in the losses sustained, and the expenses incurred, during the contest in which the North-West Company was for some years engaged with the Earl of Selkirk and the Hudson's-Bay Company.

It is not necessary to my present purpose to enter into any discussion of the merits of that contest, further than to refer to the fact, now admitted by all parties,—that the *real object* in dispute all along, was the possession of the *Fur Trade*, and that, throughout the contest, the struggle on the part of the North-West Company, was merely to maintain possession of what they actually held, and to resist the attempts made to deprive them thereof; whilst, on the part of their opponents, the object was to deprive the North-West Company of that possession, which these opponents argued, was an intrusion upon *their* lawful and exclusive rights.

The merits of the question, as to legal rights, have never been decided; indeed it was found extremely difficult to bring them to any adjudication; and expensive competition in trade, and forcible seizures of property, appear to have been the means most relied on by the assailants, in the commencement of this contest. It is not, however, my present purpose to refer to the scenes of violence, the accusations, and the recriminations which ensued; but merely to show the necessity under which the Partners of the Firm of M'Tavish, M'Gillivrays and Co. were peculiarly placed, to resist, by all means in their power, those attacks upon interests which *they* considered themselves lawfully authorized to defend.

The whole capital of the House, together with a great deal of capital belonging to their friends, and which had been placed at interest in their hands, was all embarked in the trade of the North-West Company; and upon the *success* of that trade, and upon the *security* of the capital invested therein, did at all times depend the capability of the House to pay their engagements. Their resistance, therefore, of the powerful means brought into operation against them, was not only a necessary effort, on the principle of self-preservation, but was also the only means of preserving the interests of their Creditors.

Such having been the nature, and such the objects of the contest in question, it follows, that the charges and expenses attending the same, were actually unavoidable, whether the parties could afford them, or not; on the obvious principle of sacrificing *a part*, for the preservation of the *remainder*; but as it is not my present object, further to justify either the contest, or the expenses which it caused, I shall merely refer to the actual circumstances under which it was brought to a conclusion.

In the fall of the year 1820, the losses and expenses which had been incurred, had seriously impaired the means of sustaining a continuance of them; and as the weight of supplying these means fell chiefly, or I may with truth say, wholly upon *me*, since the resources of the House in Montreal always consisted of Bills of Exchange on London, which I was obliged to pay, *my credit*, which had previously been rather heavily taxed, was now seriously endangered; and if it had not been maintained, the whole fabric of the North-West Company, with all the capital embarked in it, whether belonging to Partners or to *Creditors*, would at once have crumbled into ruin.

This pressure on our finances was also far from being the *whole* of the difficulty in which the concern was placed. Many of our Partners in the North West, and almost all those at Montreal, were not only destitute of capital, but *some* had got deeply indebted to the House; and seeing no probability of sharing profits, by means of which to pay these debts, *some* became discouraged, and relaxed in their efforts for the common cause; others retired from the concern, in order to save their capital—which was done by almost all those of the North-West Partners who had realized *any* capital; *some* meditated a desertion of the cause, or rather, a change of sides in the

contest; and by *these last*, delegates were sent to London, to open a negotiation with the Hudson's-Bay Company; whilst *some others*, apparently reckless of consequences, seemed only anxious to obtain the means of indulgence for the present day, and to waste, in heedless extravagance, as much as possible, of property which did not belong to them.

If it be asked, why Partners were permitted thus to squander the property of the concern, or of its Creditors? I will answer—*first, for myself*—that it was a matter into which I had neither time nor opportunity to inquire, and which it was not in my power to prevent. A man who, within the space of four years, crossed the Atlantic Ocean eight times,—voyaged to Lake Superior thrice, and once to the Red River,—upon whom devolved, at once, the duty of making the necessary arrangements, in times of extraordinary emergency, *in that country*, and of directing the conduct of legal proceedings, of no ordinary difficulty, in successive years, and terms, and in the different districts of *Upper Canada*,—who was also the organ, *in England*, of making to His Majesty's Government the representations necessary for defending his friends and associates, and maintaining their and his own rights and character, against the power of high rank, abundant wealth, extensive influence, and very uncommon talent and ingenuity, which were all united against them, and exerted with extraordinary pertinacity, and unsparing inveteracy, to effect their absolute destruction,—and who, at the same time, had to provide the means of paying the expenses of all these vexatious proceedings:—I submit that it was scarcely possible for a man, with these various avocations upon his hands, to attend, at the same time, to cash disbursements and current expenses at Montreal. The amount of these expenses was sure to come upon me at the end of the year; and it was a sufficient duty *for me*, and I often found it no easy task, during my winter visit to London, to organize resources for the payment of demands during my absence; and during the whole continuance of the contest, with the exception of these occasional and very needful visits to London, I scarcely remained *one month*, in *one place*, at any one time.

For my Brother, also, I beg to state, that, in some points, the contest bore more heavily on *his* time, on his person, and on his feelings, than even on my own; and the ordinary duties of superintending the details of general business, and of regulating current expenses at Montreal, devolved necessarily on other Partners; besides that, probably, the expenditure of individual Partners was less attended to in the midst of the bustle which prevailed, than it would have been under different circumstances.

Before the commencement of this unfortunate contest, the concern *had been* a profitable one. Large fortunes had *formerly* been made in the House; and, but for the competition of the Hudson's-Bay Company and Lord Selkirk, it was not doubted that the trade would continue to yield large profits. The effects of the impending contest were not duly appreciated; and the Partners had got too much into the habit of regulating their expenditure rather according to their own inclination and convenience, than to their actual income.

My Brother was considered a man of fortune; and he had been, in fact, originally the only capitalist amongst us; but *his Partners* also, seemed impatient to figure in the character of men of fortune; and some of them, who had not brought a shilling of capital into the House, had scarcely got their names admitted into the Firm, when they at once launched into all sorts of expenses;—got married,—set up establishments,—and gave entertainments,—without considering whether or not they could afford the means, and without regarding the limits to demands on the funds of the House, which were fixed by our articles of agreement. It is not my wish unnecessarily to drag forward the names, or to stigmatize the conduct of individuals; but, on the other hand, the circumstances in which I am placed, preclude my suppression of the truth, in deference to the feelings of *any* individuals; and if my statement is questioned, I have only to say, let the facts be investigated.

This system, of extravagance became at last too serious to be overlooked, but it was not easy to interpose an effectual check, especially after things had gone a certain length; and those of us who were the most interested in interposing such check, were also the most occupied in the urgent and laborious duties connected with the contest, in which property, character, and personal feeling, were alike assailed, and alike to be defended; so that even the repression of the extravagance of Partners, came to be considered comparatively a secondary object. If it be said, that *all* were alike interested in preventing the waste of the House's means, I will answer, that at the time of which I speak, *some* Gentlemen had already drawn upon those means far beyond any share they could ever expect to derive from them; and when this system of extravagance was continued, in disregard alike of remonstrances, and of the repeated promises of the parties, as well as of the stipulations of our agreement; and when the peculiar

situation of the House at the time, is taken into consideration, together with the danger at all times, of quarrelling with Partners, who have it in their power, if supplies are refused to them, to incur debts, which *must* be paid; it will be obvious that the case was one of some delicacy and difficulty. It was *our* misfortune to have too many of these Gentlemen Partners, supporting themselves and their *families*, upon *our* means; whilst of those amongst us, who provided the capital, and who performed all the important duties of the concern, *my Brother* was generally separated from *his* family; and Mr. Thain and I myself refrained from contracting engagements, to burthen ourselves with *families*, which, in the case of our Partners, we had found to be at once a cause of increased expense, and an excuse for neglect of duty.

It is however useless to pursue this subject; my present object being merely to show the circumstances in which the House was placed *five years ago*, and the consequent benefit which the Creditors have derived from *my* arrangements.

It was under the circumstances which I have thus described—with reduced means, with a losing trade, and with credit in jeopardy—with disunion in our councils, and defection among our Partners, if not direct treachery in our camp—with *some* Partners of our House not only useless, but burthensome to us, and whom we yet feared to cast off, because they had the power to injure us—it was under these almost desperate circumstances, that in the month of December 1820, I opened a negotiation with the Hudson's-Bay Company, for a general arrangement upon a *new basis*; which, with the co-operation of my friend Mr. Ellice, was in three months concluded, and which in course of the following summer, I carried into effect throughout the interior country.

This arrangement has been a subject of much discussion, and amongst my Partners generally, of much discontent, which, if the case is fairly considered, will, I think, appear extremely unreasonable. It was effected just in time to save the whole concern from destruction; and our circumstances not being known to our opponents, and they also having their own reasons for wishing to terminate the contest, I obtained liberal, and even advantageous terms for all parties connected with the North-West Company, and yet *not one* was satisfied; and it even seemed as if those who had been the most anxious to abandon the ship, when they thought her sinking, were now fully entitled to participate in the salvage.

The Partners of the North-West Company consisted of *two* classes: *first*, those possessed of some capital, who had generally retired from the concern, as already mentioned, retaining, according to the agreement, a certain interest in the trade for a limited period, and leaving an adequate capital still at stake in the country; and *secondly*, the younger Partners, by whom the trade in the interior was actually conducted, in their respective wintering grounds, and who were generally indebted to the House at Montreal, for the capital furnished for their shares of the different outfits, as well as for advances made to them personally.

The arrangement with the Hudson's-Bay Company, which was thus a subject of discontent amongst these Gentlemen, has in fact saved the whole of them from serious, and by any other means inevitable, loss of property, and many of them from absolute ruin. It preserved the shares and the privileges of those who *remained* in the Indian country, who under its provisions have become chief factors and chief traders of the Hudson's-Bay Company, and who, if it had not been made, must have accepted any terms which the Hudson's-Bay Company, as conquerors in the contest, would have deigned to accord to them; and it realized at once the value of the property of those who had *retired*: which property, consisting as it did, of trading goods and stores at the different posts and stations occupied by the Company, from the Gulph of Saint Lawrence to the Pacific Ocean, it would have been extremely difficult to realize any value for, by any other means; and if the North-West Company had been compelled to give up the contest, or if the means of maintaining it had not been provided, it is certain that no value for this property would ever have been realized.

The realization of this property appeared to me to be a very important object, and I considered it peculiarly important and beneficial to those Gentlemen to whom I have last alluded; the greater number of whom, however, instead of being pleased or satisfied, actually complained, as if I had done them an injury, instead of a benefit; because, in addition to the preservation of their property, I had not created a fund to repay their *past* losses and expenses.

The object most material to my *present* purpose, however, is to point out, that in thus realizing the value of the inventories, for account of those Partners who were indebted to the House, I so far converted into tangible means,

for the benefit of the Creditors, debts which previously were scarce worth the paper upon which they were recorded ; and the whole amount from those inventories so brought into the funds of the House, was three-fourths of 164,000*l.* or a sum of 123,000*l.* sterling.

This sum of 164,000*l.* and an equal sum, brought in by the Hudson's-Bay Company, was to form the Capital for carrying on the Fur Trade under the new arrangement ; and it was agreed that one moiety of the 164,000*l.* should be supplied by my Brother and myself ; in return for which, we were to hold certain shares in the trade. I was not at the time aware of the engagements of the House in Montreal, and in the distribution amongst the Partners thereof, of the shares so acquired under the new arrangement, I certainly meant to be *generous* ; I now find to my cost, I was *profuse* ; and still the case was the same as with the Partners of the North-West Company—not one was satisfied. For my Brother and myself I retained only of *present interest*, two shares and a half, as a compensation for the commissions which I had relinquished in London ; and during the lives of both of us, two-thirds of eight shares, and one moiety of the same eight shares to the survivor ; so that all to which *the survivor* would now be entitled, under that arrangement, would consist of *six shares and a half of present interest*, and a contingent interest in two shares and a half, upon which the dividends were to be retained in trust for certain purposes by the Hudson's-Bay Company. I also retained a reversionary interest in one moiety of all the shares acquired under the arrangement for Capitalists, distinct from the wintering or trading shares ; but in consideration of providing one moiety of capital, and for the space of fourteen years, eight shares were given to certain Gentlemen, merely because they had been *our Partners*—who had no legal claim on us, beyond the termination of our Partnership in November 1822—of whom no capital was required, and, with the exception of Mr. Thain, no duty ; and yet who all, with the same exception, appeared to be almost alike dissatisfied. It may, however, be satisfactory to the Creditors to know, that I consider nearly the whole, if not quite the whole, of *these shares*, still liable for the engagements of the House, and that I shall probably be enabled to retain them for the benefit of the Creditors ; though I could not perhaps have done so for my Brother or myself. These shares have been valued at 5000*l.* sterling each, and I think they may be disposed of for that sum.

By a subsequent arrangement with the Hudson's-Bay Company, which, in conjunction with Mr. Ellice, I succeeded in effecting in the summer of 1824, and which is even *more* important and beneficial to *the Creditors* than the former one, I surrendered and assigned to the Hudson's-Bay Company our whole Capital, the moiety of 164,000*l.* ; and the whole of my Brother's and my own shares and interest in the trade, *present, reversionary, and contingent*, and received in return a certain sum of *Hudson's-Bay Stock*, which is a saleable and transferable corporate security, convertible into money, and by which arrangement, if time shall be allowed to realize the stock at its full value, I have, at the sacrifice of the prospect of a large reversionary fortune to myself, brought into the funds now applicable to the payment of the engagements of the House, the whole value of the capital so given in, say 82,000*l.*, and a further sum of clear profit, exceeding 100,000*l.* sterling.

This personal sacrifice of my reversionary interest, for the sake of immediate resources, I made, in consideration of my Brother's situation and feelings, though without his knowledge ; for he was at the time in Canada, and did not even know the particulars of our negotiation.

I was also influenced, by having discovered, or rather, by having cause to suspect, that the engagements of the House in Montreal were larger than I had previously anticipated ; although, even *then*, I had no doubt whatever of being enabled, by means of this last arrangement, at once to pay off all these engagements, which there was a manifest object in doing, because, in Canada, we paid interest at the rate of 6 per cent., while in England we received only 5 or 4.

It was publicly declared by me, both in London and in Canada, that the chief object of my voyage to America, in the beginning of the present year, was to settle all these engagements, and to bring all my concerns in this Province to a final close. It is of no use *here* to dwell upon my disappointment, and dismay, at finding these engagements so heavy, that all the means I had procured, by my arrangements and sacrifices, may possibly be insufficient for that purpose. My object is, neither to excite, nor to make any appeal to, sympathy or compassion ; but merely as a matter of fact, to show the Creditors of the House, how much *they* have benefitted, by exertions on *my* part, which, it is now possible, may leave little, if any surplus, to *myself*, but which, I submit, ought, at least, to give me some claim to *their* confidence and consideration.

7

Let it not be imputed to egotism, that I speak in the first personal singular, for I am perfectly entitled so to do. In these arrangements I had neither authority, nor instructions, nor assistance, from the North-West Company, or from M^r Tavish, M^r Gillivrays and Co., nor did I act on the behalf, or as the Representative, of either concern. I negotiated arrangements, and, as the Deeds will show, I executed Deeds, *in my own name and right, and on my own responsibility*; and when I executed the agreement with the Hudson's-Bay Company, I had not even a Power-of-Authority from my Brother; although *for him* I had entered into stipulations; and the Company had no security beyond my personal engagement, that the arrangement should be carried into effect. I had, indeed, a moral confidence, that whatever I did, my Brother would support; and that our united influence would carry through any measure, which was right in itself; and neither in *this*, nor in any other point, did he ever deceive or disappoint me; but in justice to myself, I must declare, the arrangements were mine, and he merely aided me in carrying them into effect.

As to matters of separate personal interest, such as the division, betwixt ourselves, of the benefits thus acquired—the point never was made a subject of discussion. Our mutual object, and that for which each was at all times ready to make every sacrifice, was to maintain the character of the concern, and to support the credit of the House. Neither of us had any doubt as to the ultimate possession of a large fortune, between us; and every thing belonging to either of us, was considered so much in the light of common property, that we thought very little about the ultimate distribution of it. In my arrangements with third parties, I always placed my Brother's name before my own, and his interest on an equal footing; whilst, on the other hand, he always considered that this equality of interest should apply *only* to our *present* shares in the trade, and he always looked on the *contingent* and *reversionary* interests, which had been acquired *solely* by my arrangements, and which probably would not fall in during *his* life—to be *my* sole property.

In the first Deeds with the Hudson's-Bay Company, all the conditions and benefits were stipulated to be for the *survivors* and *survivor* of the contracting parties; and as the agreement was for a period of twenty-one years, *this* arrangement was made with a view to prevent any question about succession, in case of the death of any of the parties; but was not meant to affect the separate rights of any of those parties, or their representatives.

When subsequently it became necessary to make arrangements betwixt ourselves, for finding the Capital, which I had engaged we should supply, a Deed was executed in May 1822, by which it was agreed, that during both our lives, we should *jointly* provide the Capital, and *equally* divide our shares in the trade; and that in case of the death of either of us, during the twenty-one years, the responsibility of finding the whole Capital, and the whole of the reversionary and contingent interest, which I have mentioned, should devolve to the *survivor*. As the difference of age betwixt us was eighteen years, besides the impaired state of my Brother's constitution, the probable effect of this Deed was obvious, and it fully confirms what I have stated, as to *his* views in regard to the means acquired by my arrangements.

In my arrangement with the Hudson's-Bay Company in 1824, this *reversionary* and *contingent* interest was, in common with our other rights and claims, given up, in consideration of receiving the Hudson's-Bay Stock; and it was taken as of more value than *all our present* shares of the trade under the general arrangement. It was, as the probable survivor, *my* sole and separate property; but I did not therefore make any difference betwixt my Brother and myself, in the distribution of the Stock obtained in exchange for it. On the contrary, an equal sum of that Stock was placed in the name of each of us; and as no part of that so transferred into my Brother's name, could be disposed of, without a *special* Power of Attorney from himself, and as a large sum of Stock was immediately required, to be pledged for sums of money which had been borrowed to meet the engagements of the House, the greatest portion of *my* Stock was at once transferred for that purpose, whilst the part nominally *his*, remained apparently unincumbered.

This was the state of matters when I left England in January last, and on my arrival here, he immediately executed Powers of Attorney, to ratify the Deeds into which I had entered on his behalf in England, and also for the transfer of the Stock placed in his name, if requisite. It was a part of the arrangement, under these Deeds, that the final account of the distribution of this Stock, and the payment of the money borrowed on the credit of it,

should be adjusted in London in June next; and that adjustment still remains to take place, although his share of it now devolves upon me, in addition to my own.

It is scarcely necessary to point out how much it adds to the security of the Creditors, that he carried, even beyond the grave, the feeling of reciprocal confidence which had always subsisted betwixt us, and which he has sufficiently manifested by appointing me his sole Executor, and his general Legatee, thereby enabling me at once to apply all this property to the payment of the House's debts.

These circumstances are all intimately known to my friend Mr. Ellice, who was in fact a party to all the Deeds which I have mentioned; and in allusion to the last act of my Brother's life, I cannot resist the impulse to quote here the following passage from Ellice's last Letter to me, dated on the 26th of October last, viz.

"His anxiety to place in your hands every means and assistance in his power, to meet a situation which he foresaw would be attended with extreme difficulty and embarrassment, and the wisdom and prudence of the last act of his life—are all so many proofs (if proofs indeed were wanting to those who knew him) of a mind gifted with no ordinary qualities of manliness, integrity, and the highest principle."

This tribute indeed is justly due to his memory, and I could easily enlarge upon the subject; but that it is not my present purpose, either to indulge my own feelings, or to intrude upon those of others: I trust, however, I may be permitted to adduce this last act, of a man in the last stage of aggravated and protracted suffering which our nature is capable of sustaining—this anxiety for the interests of his Creditors, even when unable to think of the interests of his own Family—as an argument to weigh with those Creditors, in their measures towards his property, and towards his Family. I do not ask them to relinquish any part of their claims, but merely to allow time, to prevent my Brother's property and my own from being sacrificed. In the administration of the succession bequeathed to me, he knew well that I should consider myself as a Trustee, acting for the benefit of his Children; and in that character, it is my duty to make every possible exertion, to work out some surplus for them. It is also, obviously, on the principle of self-preservation, my duty, out of the wreck of those arrangements, by which, even at the commencement of the present year, I thought I had realized an independent fortune, to endeavour to save some surplus for myself; and since the debts must be paid, before either of these objects can be accomplished, I think it must be evident to the Creditors, that in this matter, their interests and mine are in fact the same.

Were I not—unfortunately for myself—liable, as a Partner of the Montreal House, for all its engagements, I should at this moment be its largest Creditor, tenfold; instead of seeing, as I now must see, the whole acquisitions of a life of no common exertion, and of exertion generally successful, swallowed up by the engagements of a concern, over the financial arrangements of which, in regard to the expenditure of money, I had no control; and from which I have never derived any benefit.

It was only in 1813, that I actually became a Partner of the House, and since that time no profits have been divided; therefore I have never shared in any profits of the House in Montreal; and from the trade or profits of the North-West Company, except my Commissions as a London Merchant, previous to 1813, I have never directly or indirectly received one guinea, which fact I am induced to mention, merely because it has been alledged by some of the liberal and grateful Partners of that concern, that I had enriched myself at their expense. My transactions and expenses, being now subject to investigation, will at least prove the falsity of any rumours imputing to me either selfish or illiberal conduct, towards any of my Partners or connexions; and in some cases, I must confess it might have been better for my Creditors, if I had been more studious of my own interest.

I have here, however, stated all matters as they really took place; I have set forth our arrangements as they were made; I have to the best of my knowledge, explained how our concerns came into their present state; and I trust I have shewn to the Creditors, that whatever disappointment they may feel at the suspension of our payments, and at the delay, or, as they may apprehend, the loss, likely to arise on the final settlement of our concerns—yet, that in these concerns, I am the principal sufferer; that if it had not been for my arrangements, their situation would have been very different from what it is likely to be; and finally, that it is my interest, as much as it is my wish, to make every exertion in my power, for the benefit of the Estate, and for their ultimate security.

Montreal, 27th Dec. 1825.

(Signed)

SIMON M'GILLIVRAY.

To the Creditors of the Firms of M^r Tavish, M^r Gillivrays and Co., and M^r Gillivrays, Thain and Co., Parties to my Deed of Assignment.

London, 25th July, 1826.

GENTLEMEN,

I HAVE already so fully communicated to the Trustees to whom my property has been assigned, for the benefit of my Creditors generally, and of you, amongst the number, all the circumstances which have occurred in regard to my unfortunate Canadian concerns, since my arrival in England, that it may seem unnecessary thus further to trespass upon your attention individually; but inasmuch as your own interests are deeply involved in the result of these concerns, and as the arrangements made for your benefit in regard to them, are now likely to be frustrated by circumstances over which I have no controul, I think it incumbent upon me, in acknowledgment of the confidence and good feeling which induced you to become a party to my Deed of Assignment, to offer you an explanation of these circumstances, while it is yet possible that your own influence and interference may in some measure avail, to protect your own interests, and to prevent the final defeat of the arrangements which have been devised for your benefit.

It is not necessary that I should recapitulate the statements submitted to you last winter at Montreal. They were declared to be highly satisfactory, by all the Creditors who attended either of the three successive Meetings which took place, and they remain on record, in the possession of your Trustees. Neither is it becoming that a man should say too much on the subject of *his own* conduct or character; but, assailed as *I now am*,—conscious as I am, of having merited acknowledgment, rather than harshness, at the hands of my Creditors,—and confident as I am, that the more publicly and the more rigidly my transactions are scrutinized, the more evidently must appear the fairness and impartiality of my conduct towards my Creditors, to say the least of the matter;—I trust I may be excused for expressing my surprize, that any of them should refuse their assent to the arrangements which I voluntarily offered for their benefit, and which included every sacrifice of property and of time, that law or justice could require at the hands of any Debtor. Such conduct in Creditors, would tend to reduce to the same level, the man who promptly and unreservedly comes forward of his own accord, to declare insolvency, *not* imputable, be it remembered, to any thing done, or left undone by *himself*, to surrender his property for the payment of debts, *not* contracted by him, and to devote his time, to an extent which the law could not require, for the benefit of his Creditors: in short, it would tend to reduce the man of honour and probity to the level of him who, with culpable extravagance, has wasted the property which did not belong to him, or who, with fraudulent intentions, barely avoids the direct violation of the letter of the law;—but, happily, the law, and the administration of equity in England, gives to a man so unjustly treated, the right of appealing to authorities which can discriminate between misfortune and misconduct; and my chief regret, in contemplation of the appeal which it is likely that I may soon be under the necessity of making, arises from the consideration, that the unjust and vindictive proceedings which may reduce me to that necessity, can be resisted *only* by measures extremely injurious to *your* interests, as well as subversive of all my hopes of bringing these concerns to any satisfactory termination.

You will recollect, that it was early in the month of December last, that I received at Montreal the afflicting intelligence of the death of my late Brother, at the same time with the information in regard to the state of my own concerns and resources in England, which induced me to determine upon suspending the payments of our House, and at once declaring its situation to the Creditors. During the remaining part of the month of December, I had no payments of any importance to make; and some small deposits of money which I could not help receiving, were laid aside in my desk, and subsequently returned to the parties to whom they belonged. So soon as the conviction was forced upon me, that I could not meet all the engagements of the House, I acted on the ground that it was useless to put off the evil day, and that it would be wrong to make any payments which should have the effect of giving to any one set of Creditors a preference over others; but from this general principle

I made two exceptions, and *not* out of any funds belonging to the House; but out of my own separate property, I made arrangements for securing about 12,000*l.* of public money, belonging to the Province of Upper Canada, and 11,000*l.* of Promissory Notes, indorsed for me by a Friend, and discounted at the Bank of Montreal. In regard to the public money, my arrangement in this matter has prevented proceedings which Government might otherwise have adopted, and which would have enforced the same result; and in regard to the Indorser of my Notes, I have only to say, that to provide for his security was my individual debt, because it was for me, and without any security or reciprocity from the House, that he had incurred this liability. I was about to make a sacrifice of a separate personal Estate of above 100,000*l.* for the payment of the debts of my Partners; and if, out of that sum, I secured the only separate personal debt I owed, I thought it was right, and I now find it was lawful, and that under the Bankrupt Laws of England, my separate Creditor was entitled to be paid in full out of my separate Estate, before it should become liable for the Partnership Debts. With these exceptions, I made no distinction between any other parties, but acted on the principle of "*felling the tree as it stood.*" My nearest friends and family connexions, who were Creditors of the House, are placed on the same footing with those whose names and claims were alike unknown to me when I arrived at Montreal; and whatever may be the result, I am prepared to prove, and I feel it due to myself to repeat the assertion, that no man ever met his Creditors more entitled to their approbation at least, if not their acknowledgment, than myself.

The arrangement for the security of Mr. Dunn and Mr. Gerrard, which I declared openly from the beginning, and which is as much on record as any of my other transactions, I have not indeed heard directly blamed; but I have heard that *other persons* are dissatisfied, because *they also* were not considered privileged Creditors; and from this dissatisfaction, and the proceedings to which it has led, has arisen the occasion for my troubling you with this Letter.

The first meeting of the Creditors took place on the 27th of December last, when every thing within my knowledge was declared, and the arrangement for the security of Mr. Dunn and Mr. Gerrard was particularly explained to them. At this meeting also, my voluntary offer to make an Assignment of the whole of my own and my Brother's Estate, for the payment of the House's debts, was received with sympathy and applause. Few men are capable of more intense application than I devoted to the task of investigating accounts, and collecting and digesting information, preparatory to the second meeting on the 25th of January, at which the Deed of Assignment, and the statements therewith connected, were fully discussed; and at the third meeting, which took place on the 2d of February, the Deed was executed, having previously been modified to suit every condition and precaution suggested by any of the Creditors themselves, and in some of which, I confess, I thought they bore rather hard upon me; but I never anticipated that any Creditors could be so blind to their own interest, as to oppose, or to institute proceedings to set aside an arrangement so beneficial to themselves; and in the confidence that nothing of that kind could take place, and anxious to prevent the sacrifice of my funds in England, for which purpose my own presence and exertions were indispensably requisite, I hastened my departure from Canada, leaving my Deed signed by about one half in value of the whole of the Creditors.

The remote residence of many of the Creditors, rendered it impracticable within the time, to obtain their assent, or even to receive any communication from them. There were also other Creditors who held, or expected to establish, hypothecary or privileged claims against my Brother's real Estate in Canada; under the local laws of that Province; and the only considerable Creditors at Montreal, who did not either sign, or declare their assent to the Deed, with the reservation of such hypothecary claims, were the Executors of the late Mr. David David, the debt to whom exceeds 18,000*l.*, and the magnitude of whose claims, was, in my opinion, the best pledge of their ultimate assent to my arrangements; besides, that *two* of these Gentlemen had, for their own personal claims, become parties to the Deed, a *third* had attended the meetings, and expressed his assent to the principles of the arrangement, and the *fourth* was the only creditor who actually refused to execute the Deed; but even *he*, after giving instructions for commencing a prosecution against me, was induced, by the representations of one of my Trustees, to recal these instructions; so that, on leaving Montreal, without question or molestation, notice of my Assignment having been given in all the Newspapers, and my intended departure from the Province being publicly known, I really had every reason to consider my arrangements as virtually agreed to by all the Creditors.

It was at that time uncertain whether the Bank of Montreal would be among the Creditors, or not; and since it is from the Directors of that Institution, that the attempt now made to frustrate my arrangements proceeds, it is requisite that I should offer some explanation of the nature of *their* claim, and of the history of my transactions with the Bank.

It has already been stated by me officially, that the chief object of my voyage to America last year, was to settle all the engagements of the House in Canada, and to bring all my concerns in that Province to a final close; and enormous, beyond any previous knowledge or expectation of mine, as I found the Debts contracted by my Partners to be; yet still, my funds in England, had they not been depreciated in the general depreciation of all other funds, would have paid the whole. The intelligence of this depreciation, and at the same time, the news of my Brother's death, by which certain funds, on which I had previously relied, were locked up until I should be able to return to England—were the immediate cause of my determination to stop payment; but up to the time when that intelligence reached me, I had paid off every just demand brought against the House; and during the months of October and November last, I had provided in part the means of so doing, by selling to the Bank of Montreal, Bills of Exchange on the House of M^rTavish, Fraser and Co. of London, to the amount of about 29,000*l*. sterling. I had no cause to doubt, and I had no doubt whatever, about these Bills being duly honoured, since I had left what I considered ample funds for that purpose, in the hands of my friends in London. Edward Ellice and John Fraser, Esquires, had my Power of Attorney for the sale of 20,000*l*. Hudson's-Bay Stock, which at this time last year could have been sold for upwards of 50,000*l*. sterling; and Mr. Ellice was indebted to me, on an unsettled account of Capital, in a sum which I estimated at 18,000*l*., besides that there was a large sum of Hudson's-Bay Stock in my Brother's name, and he and myself being the principal Partners of the Firm on which the Bills were drawn, and which, under my own management in London, had always supported the highest character for credit and regularity, it was quite impossible for me to anticipate, nor did I anticipate, that any difficulty could have arisen in the payment of my Bills. But in the mean time, the financial panic, the suspension of commercial credit, and the depreciation of all property, which have since produced such extensive distress in England, had already commenced; my Brother's state of health rendered him incapable of transacting any business after his arrival in London; and his death, without having transferred the Hudson's-Bay Stock standing in his name, locked up means which might have been derived from that resource, to a much greater amount than the whole of the Bills in question. Of the 20,000*l*. Hudson's-Bay Stock, which I had left in the hands of my Attorneys, Ellice and Fraser, an amount of 17,000*l*. had been by them pledged as security for 31,000*l*. which they borrowed to meet the engagements of M^rTavish, Fraser and Co. and the remaining sum of 3000*l*. was subsequently transferred to Mr. Ellice, in consideration of monies paid by him for the same purpose. My Partner, Mr. Fraser, had advanced, out of the funds so obtained, above 8000*l*. on unsuccessful Underwriting Accounts; and a further sum of above 10,000*l*. on *Shares* of new speculating or projected Public Companies, in which he had embarked after my departure from England, and without my knowledge, although for our joint account; so that, besides the depreciation, whereby my 20,000*l*. Hudson's-Bay Stock, instead of 50,000*l*., produced only 37,000*l*. these transactions of my Partner deprived me of actual money to the amount of 18,000*l*., and the funds in his hands being thus exhausted, the consequence was, that when my Bills from Canada, drawn on the 21st of October, were presented, they were suffered to be protested for non-acceptance.

The intelligence of my Bills being thus dishonoured was received by the Montreal Bank, and communicated to me by the Cashier on the 21st of January, four days before the second meeting of my Creditors, already mentioned. I had previously, on receiving the information which induced me to stop the payments of the House, written most earnestly and urgently to Mr. Ellice, to request that all my Bills should be paid out of any funds belonging to me, in possession or in expectancy; and so long as I retained the direction of my own concerns, I continued to urge the same request; but from the time that I agreed to make an Assignment of the whole of my remaining property for the general and equal benefit of all my Creditors, "*I considered myself precluded from taking any step to change or improve the relative situation of the Bank, as compared with that of any other Creditor,*" and I sent a written official intimation to the Cashier, *in these very words*,* on the 23d of January; so that it is quite impossible for the Directors to allege any mis-statement or concealment on my part, as they had this intimation before them nine days before my Deed of Assignment was executed.

On my arrival in London, on the 1st of April, I found that about 11,000*l.* of my Bills had been accepted and paid by M^r. Tavish, Fraser and Co. by means of monies partly received at the Hudson's-Bay House, and partly from Mr. Ellice and that Bills to the amount of 18,000*l.* were under protest for non-acceptance. It is a singular coincidence, that this amount was exactly the same with that of which I had been deprived by my Partner's transactions, as already explained; and M^r. Tavish, Fraser and Co. had no other funds wherewith to pay these Bills. All that remained of the Hudson's-Bay Stock, standing in my name, was only 7621*l.* 6*s.* 8*d.*; which sum I immediately transferred, in part of the 9000*l.* Stock which, according to the Deed and its Schedules, as well as by the proceedings of the Creditors, I was authorized to transfer, for the security of Messrs. Dunn and Gerrard; the Hudson's-Bay Stock standing in my Brother's name, and the eventual surplus of that Stock which had been pledged as security for borrowed money, or which is locked up in the different trusts specified in the Schedules to my Deed, were all equally locked up, out of my immediate reach, besides that I had already assigned my interest in them to the Trustees; and, as the Attorney of those Trustees, to have paid these Bills with monies raised on the faith of the funds thus assigned, would, even if it had been practicable, amount to a direct breach of trust on my part, to the Trustees, and to the other Creditors, a preference over whom would thus have been given to the Bank. I had no other means of paying these Bills, and Mr. Ellice refused to advance any funds for that purpose. I had therefore no choice, but to suffer them to be protested for non-payment, and they were taken up by the Bank Agents, Messrs. Thomas Wilson and Co. for the honour of the Bank.

The circumstances of the case were explained to Messrs. Wilson and Co., but the explanation was not satisfactory to them: an unfounded and injurious allegation of theirs, *that I had made representations in Canada, to mislead the Bank*, was indignantly denied; and the discussions which ensued, terminated in their bringing an Action against myself and Mr. Thain, for the sum of 16,000*l.* sterling, for which we are both held to bail, and thereby precluded from leaving this country, although it is of the utmost importance to the interests of the Creditors that both of us should speedily return to Canada, since by that means alone, can any satisfactory result of the Canadian accounts ever be reasonably expected. By the last advices from Montreal, I am apprized that the new Bank Directors have resolved to follow up this prosecution so commenced by their Agents; and the result of this proceeding on their part, is that to which I have now particularly to request your attention.

My Deed of Assignment gives me no defence, in law or in equity, against the Bank, or against any other Creditor who has not become a party thereto, and who may think fit to prosecute me; and having by that Assignment divested myself of all my property, I have no funds remaining, wherewith to pay such claims as may thus be prosecuted against me. Then what follows? After judgment shall have been obtained, since I cannot pay the debt, I must go to prison; and if I remain in prison twenty-one days, such imprisonment will constitute an act of Bankruptcy. The harshest part of this process, however, namely, the imprisonment, it rests with myself to avoid; and it would be a very useless sacrifice of one's feelings, to let matters go quite so far, for the sake of postponing that which it is now perfectly evident cannot be prevented, unless *all the Creditors* shall become parties to my Deed of Assignment. It has been my wish, undoubtedly, to avoid the *éclat* of a Commission of Bankruptcy; but if it becomes necessary, I can contemplate it with much less of painful feeling than I did my voluntary declaration of insolvency at Montreal in December last; and therefore unless, on re-consideration of the matter, the Bank Directors, or a general meeting of the Proprietors, shall quash the proceedings in this country, and assent to the Deed, and unless *all the other Creditors* shall also assent thereto, since it will be impossible, in such case, either for the Trustees or for me to act with any confidence or security; I shall have no alternative but to avail myself of the provision in the new Bankrupt Law, whereby a declaration of insolvency filed at the proper office, will at once place my person under the protection of the Commissioners of Bankruptcy, leaving the Trustees and the future Assignees to contend for my property.

Those Creditors whose prosecution may be the immediate cause of this catastrophe, will not thereby obtain any preference over others, but all alike must proceed as best they may, to establish their claims; and the difficulty, the complicated and protracted litigation, and the enormous expense which must necessarily ensue, will be ruinous to the Estate, and most destructive to the interests of all the parties concerned; excepting only the Lawyers, to whom it will yield a plentiful harvest of doubtful points and heavy fees. Amongst other questions which will immediately arise in regard to the *Hudson's-Bay Stock*, will be the following:—1st, Will my interest therein be vested in

the Assignees to be appointed under the Commission of Bankruptcy? or can it be held and disposed of by the Trustees to whom I have assigned it?—2d, Will you, and the other Creditors who are parties to the Deed, relinquish your claim under it, in order to be admitted to prove your debts under the Commission?—*This last question would probably depend upon the decision of the former, and whatever that decision might be, still, unless you all consent to such relinquishment, will not the Trustees, for their own security, be obliged to maintain their title under the Deed, and to try the question with the Assignees?* Further questions of extreme intricacy, and great uncertainty, will remain, as to the relative rights of the Creditors of the three Firms, of M^r Tavisli, M^r Gillivrays and Co., M^r Gillivrays, Thain and Co., and M^r Tavisli, Fraser and Co., as well as the claims on the separate Estates of the different Partners; and all these points must be discussed in the Court of Chancery. I would say *decided* in that Court, before any Dividend can be paid; but really I know not where or when to look for the *decision* of them; and if I may judge of the future by the past, and so estimate the time this matter will occupy in Court, by comparing it with the time which has been occupied by other causes of less intrinsic difficulty, then I shall be warranted in saying, that the *decision* is not to be expected during the remaining term of the Charter of the Bank of Montreal; and in the mean time, neither the Bank, nor any other Creditor, can receive one shilling of their claims, unless what may be recovered by hypothecary creditors proceeding against real Estate in Canada, under the local laws of that Province.

It is difficult, under such circumstances, to understand upon what principle any Creditors can determine to persist in the proceedings now adopted by the Directors of the Bank of Montreal, or what explanation these Directors will hereafter offer to their Constituents, for this ruinous waste of the property of the Bank, in common with that of the other Creditors. Do they expect to establish a claim as privileged Creditors? If so, they will find, when it may be too late to recede, how much they deceive themselves; and their present proceeding, which is one—merely of personal annoyance by compulsory process, does not at all tend to the establishment of any privileged claim on my Estate. If the Directors should think, or should be advised, that they have any chance of establishing a claim as privileged Creditors, the rational course for them to pursue, would be to state the grounds of such claim to the Trustees, and to execute the Deed, subject to a reference of such claim to Barristers of eminence in the Court of Chancery; or they might resort to an amicable suit, so as to obtain from the Court itself a decision of the point on which they may rely; but the present proceeding is a personal Action at Law against Simon M^r Gillivray and Thomas Thain, and that Action followed up, infallibly makes these Defendants Bankrupts; after which, no subsequent change of opinion, or admission of error, by any or by all the parties, will avail to prevent the ruinous consequences which have been sufficiently stated, and from which it manifestly results, that the decision now to be taken, whatever it may be, will be irrevocable.

I have perhaps no right to imagine, that in this matter these Directors can be actuated by any other feeling than a wish to promote the interests of their Stockholders; but evident as it is *to me*, and as I think I must have made it *to you*, that instead of promoting those interests, the proceedings in question will be most injurious to them, I am induced to suggest the consideration, whether this is not one of those cases, in which the Stockholders themselves would be the most competent judges of their own interests, especially if there should appear any cause to suppose that any feeling of irritation, or animosity, or old grudge operating on the mind of any individual, against me or my connexions, could have been mixed up in the recent resolutions of a majority of the Directors. A remarkable change of opinion appears to have taken place at the Board, as well as other recent changes, and *this* change certainly was unexpected by me. The late President and Vice-President of the Bank, the present President, and all those of the Directors who were Creditors of our House, are already parties to my Deed of Assignment. *This Letter* is addressed to these Gentlemen, in common with the other parties to the Deed, and I appeal to each of them, whether they have not individually expressed to me their entire approbation of my conduct in these unfortunate concerns, their conviction that my arrangements were the best which could be devised for the benefit of the Creditors, and their belief, that it was only by means of my own assistance and superintendence, that these complicated affairs could ever be brought to any satisfactory termination. The same sentiments were expressed by two other Directors, who were not Creditors, but to whom, as personal friends, I explained all my transactions; and I have not heard a difference of opinion from any person, whether Lawyer or Merchant, in Canada or in London, to whom the circumstances have been stated. It therefore seems rather extraordinary, that a majority of the

present Directors should be the only individuals having cognizance of these arrangements, who seek, if they can, to overturn them, and thereby to ruin the interests of all the Creditors connected with them, not excepting those of their own Constituents; and under these extraordinary circumstances, I submit that it would be well for the Stockholders who have the largest interests at stake, to make some inquiry into the composition of this majority of Directors, and to consider what interest *they* individually may have in the Stock, and what grounds or feelings they may have acted upon in their recent decision, before that decision shall finally be carried into effect.

If any opinions or recommendations from London should have been amongst these grounds, then let the statements of facts therein contained be compared with mine, before any reliance is placed upon them, recollecting always, that *my* statement is that which I am prepared to maintain on oath in the Court of Chancery, whilst the statements of other persons in regard to my transactions, may be nothing more than mere surmise, such as assumed by Messrs. Thomas Wilson and Co. in their correspondence with me, as already stated. In short, let the Creditors and the Bank Stockholders look coolly at their own interests, and I really think the result cannot long be doubtful.

In the event, however, that prejudice, or the hope of obtaining some advantage over the other Creditors, should still lead the Bank, or any other Dissentient from the Deed, to persevere in withholding their assent from it; and in contemplation of the unavoidable consequence, whereby my arrangements for your benefit will be finally frustrated, it was my wish to have been enabled to point out to the Creditors who are parties to the Deed, that course of proceeding which would be most conducive to the protection of their interests under the administration of the future Commission of Bankruptcy, and on that point I have obtained, and transmitted to the Trustees, a special Opinion of Counsel, which they will be ready to communicate to you; but the point is involved in so much of doubt and difficulty, that in my present position I can scarce venture to offer you any specific advice. Any preconceived measures, such as sending Powers of Attorney, or Affidavits of Debt, to this country, might be resisted, as collusive or fraudulent; and for *me*, the only safe course appears to be, to do nothing, but let matters take their course. By my Assignment, the Trustees are in possession of all my property, both in Canada and in England, and also of the Partnership Assets, so far as it was competent to me to assign the same; and it is the opinion of my Counsel, that the Trustees could maintain this possession against the Assignees under a Commission of Bankruptcy. The question, however, is doubtful; other Counsel may take a different view of the case, and I have at this moment before me, an Opinion dated this day, given to the Hudson's-Bay Company by *their Counsel*, and whereby the Company is advised, in regard to the transfer of my Hudson's-Bay Stock, "*not to act otherwise than under the sanction of a Court of Equity.*" In this matter, it is easy enough for any party to bring all the rest into a Court of Equity. The difficulty is, to keep such complicated concerns out of that Court; and the absurdity is, that any party having important interests at stake, should force on a result so injurious to all parties, and which can benefit none. According to the principle of the Bankrupt Laws, all property recovered by Assignees, must, subject to the delays and expenses incident to the necessary proceedings, be ultimately divided amongst the Creditors who shall lawfully establish their claim; and *that result* is exactly what the Deed provides for, without delay, or expense, or litigation. The misfortune, however, is, that with such questions in the way of being mooted, the Trustees cannot venture to act, nor to part with a shilling of the property assigned to them; and any proceeding in the Court of Chancery, either by Assignees or Creditors, will lock up the whole of that property till these questions shall be disposed of; that is, possibly till another generation of mankind, or another constitution of the Court of Chancery, shall succeed to the present.

Upon the whole, I am inclined to be of opinion, that, in the event of a Bankruptcy, the only way of *ever arriving* at any settlement of the matter would be, that the Creditors who are parties to the Deed, should relinquish their rights under my Assignment, and prove their debts under the Commission; but if any one of them shall refuse to do this, the Trustees may be bound to maintain the rights of such party, under the Deed; and if it should be decided that those Creditors who are parties to the Deed, have any vantage ground, I do not see on what principle of justice or of equity they can be expected to relinquish their rights, for the benefit of persons who, by refusing the choice now at their option, of executing the Deed, will be the immediate and the sole cause of such annoyance and expense to those who are now parties thereto. In grasping at the shadow of some imaginary advantage, the Creditors who have not executed the Deed, may throw away the substance of the arrangement now within their reach; and *any one* of them may involve himself and the Trustees in litigation, of which neither he

nor I may live to see the result. Any one of them may thus prevent, for almost an indefinite time, the payment of any dividend from the Estate, and, in short, the payment of any thing except law charges; and where it is thus in the power of each and every class of the Creditors to inflict so much injury upon the rest, I would ask, is it *not* the common interest and the common duty of the whole, to unite in preventing expense and litigation, and in turning promptly to the best advantage, the assets which may immediately be realized for their benefit, by means of my arrangements?

In conclusion; I have only to observe, that as to any personal interest, or object of my own in this matter, it must be obvious, that from the moment at which I am compelled to relinquish the hope of some reversion remaining, after payment of all the Debts, the only rational object *for me* to pursue, is to get myself released from the unfortunate embarrassments in which I have been thus involved, and to be enabled to devote what may remain to me of life, capable of exertion, to some purpose useful to myself. In order to manifest every possible disposition to benefit the Creditors, and animated at the time by the hope of a reversionary benefit to myself, I voluntarily offered to devote to the settlement of these concerns, a great deal of time, and personal application, which no party had a right to exact from me; and so far as it may be an object to me to become once more master of my own time, I believe *that object* will be more speedily attained under a Commission of Bankruptcy, than under the covenant contained in my Deed of Assignment. Therefore, *this final appeal*, which I make for the benefit of the Creditors, and in order to bring the case distinctly before every one of them, is *to myself* really a matter of less importance than they may suppose. A man who has already divested himself of all his property, has nothing further to *give*, unless it be his time, and *that* also I have offered to give. And a man who is prepared to submit to Bankruptcy, has nothing further to *fear*, unless it be the consequent public investigation of character and conduct, from which it is at least some satisfaction to be able to say, that I do not shrink. It is, however, of some importance to *my ulterior views*, as well as to *your interests*, that the matter should be brought to as speedy an issue as possible; and after waiting a reasonable time for the result of the present communication, and unless, in the mean time, the Bank prosecution may have brought it to issue for me, then I may venture to promise you, that on my own part there shall be no delay.

I remain, respectfully,

GENTLEMEN,

Your most obedient Servant,

SIMON M'GILLIVRAY.

G